Civil Justice Committee Meeting

April 4th, 2006
10:15 AM - 11:00 AM
24 House Office Building

Revised

Allan G. Bense
Speaker

Mark Mahon
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Civil Justice Committee

Start Date and Time:	Tuesday, April 04, 2006 10:15 am
End Date and Time:	Tuesday, April 04, 2006 11:00 am
Location:	24 HOB
Duration:	0.75 hrs

Consideration of the following bill(s):

HB 173 CS Construction Contracts by Ross
HB 457 CS Guardianship by Sands
HB 459 Public Records by Sands
HB 817 CS Telecommunications Carriers of Last Resort by Murzin
HB 857 Insurance Premium Tax by Mahon
HB 1323 Actions Involving Free Speech or Defamation by Simmons
HB 1521 Children in Out-of-Home Placements by Barreiro
HB 7123 Child Protective Services by Future of Florida's Families Committee
HB 7157 Fraudulent Use or Possession of Identifying Information by Economic Development, Trade & Banking Committee

NOTICE FINALIZED on 03/31/2006 16:23 by Hay.Tracey

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 173 CS Construction Contracts
SPONSOR(S): Ross and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 682

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	19 Y, 0 N, w/CS	Callaway	Cooper
2) Business Regulation Committee	9 Y, 8 N, w/CS	Livingston	Liepshutz
3) Civil Justice Committee		Blalock	Bond
4) Commerce Council			
5)			

SUMMARY ANALYSIS

There are currently no specific statutory provisions relating to insurance provisions in construction contracts. This bill addresses the issue of a subcontractor's failure to obtain the insurance coverage required by a construction contract between a contractor and a sub-contractor, and the general contractor's failure to compensate the sub-contractor for past work that the subcontractor accomplished while the general contractor reviewed the sub-contractor's insurance coverage.

This bill gives a general contractor three business days to reject, in writing, a certificate of insurance given to him by a subcontractor. If a general contractor does not reject the certificate of insurance within the three day window, he or she is deemed to accept it, except under specified circumstances. The general contractor can still reject the certificate of insurance at a later date as long as the rejection is in writing.

This bill also requires general contractors who accept a subcontractor's certificate of insurance, or who have been deemed in acceptance of it, to pay the subcontractor for the work done, except under specified circumstances.

This bill's provisions also apply to certificates of insurance required by construction contracts between general contractors, subcontractors, sub-subcontractors, and materialmen.

There does not appear to be a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government -- This bill creates statutory provisions governing the actions of contractors who are parties to a construction contract relating to acceptance or rejection of certificates of insurance and the resulting payment for work done or materials supplied. There are currently no specific statutory provisions relating to this issue.

Safeguard Individual Liberty -- This bill restricts when a general contractor can reject work done by a subcontractor or withhold payment for work done by a subcontractor due to the subcontractor not having insurance coverage required in the construction contract. The bill also provides a time limit when a general contractor must reject a certificate of insurance from a subcontractor. Noncompliance with the time limit provided results in a general contractor's deemed acceptance of the certificate of insurance.

B. EFFECT OF PROPOSED CHANGES:

Background

Most property owners, general contractors, and subcontractors carry numerous kinds of insurance, such as workers' compensation[1] and commercial liability. Insurance costs are factored into the contractors' bids on a construction project. Insurance requirements for a particular construction project are included in the resulting construction contracts between the owner and general contractor, the general contractor and subcontractor, and/or subcontractor and sub-subcontractor or materialman. For purposes of brevity, this analysis refers to the working relationship between a general contractor and a subcontractor. The same practices can occur when general contractors or subcontractors contract with sub-subcontractors or with materialmen and the sub-subcontractor or materialmen are required to provide policies or certificates of insurance as proof of insurance coverage.

Although there are no laws specifically addressing the practice, a general contractor or subcontractor may require, as a part of the construction contract, a certificate of insurance or an insurance policy to be submitted by a subcontractor as a condition of work. The certificate of insurance is evidence of insurance in lieu of an actual copy of an insurance policy. At some point upon signing a construction contract, sometimes before the work begins and sometimes after, the subcontractor provides a certificate of insurance to the general contractor listing the insurance provided by the subcontractor. Most times the general contractor reviews all documents required to be submitted under the construction contract, including the certificate of insurance, prior to paying the first invoice for each subcontractor. If an insurance policy or certificate of insurance is not submitted or if it does not meet the standards of the general contractor requiring the policy under the contract, the contractor may prohibit the other party from working on the construction project or may withhold payment for work already done until the proper insurance is obtained and proof is submitted.

According to proponents of the bill, a practice of misuse of certificates of insurance by general contractors has emerged that is of serious concern to the subcontractors and their insurance agents.[2]

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[1] Employers in the construction industry with one or more employee must provide workers' compensation coverage for its' employees. s. 440.02(17)(b)2., F.S. (2005). If a subcontractor does not have workers' compensation coverage, the general contractor must provide workers' compensation benefits for any injured employee of the subcontractor. This is true even if the subcontractor lied to the general contractor about his or her workers' compensation insurance coverage or gave the general contractor a fraudulent certificate of workers' compensation insurance coverage. John J. Dubreuil, *Florida Workers' Compensation Handbook*, 3-43 (2003 Edition, 2003).

[2] Florida Association of Insurance Agents, *300 Words (more or less) about Certificates of Insurance* (2006) (on file with the Insurance Committee).

This practice involves a general contractor demanding their subcontractors supply them with certificates of insurance containing non-standard and sometimes unavailable coverage provisions, such as hold harmless agreements or waiver of subrogation rights.

Specifically, the subcontractor is told by the general contractor that in order to work on the construction project, the subcontractor must supply evidence of a liability policy with certain provisions. The subcontractor purchases an insurance policy and receives a certificate of insurance from his or her insurance agent which contains information about what type of insurance coverage the policyholder/subcontractor has in force. The subcontractor usually gives the certificate of insurance to the general contractor before starting work on the construction project. However, circumstances do exist where the documentation may be submitted after commencement of the subcontractors' portion of the project.

According to the bill's proponents, once the subcontractor's work is complete, the general contractor often refuses payment to the subcontractor for work completed because the subcontractor did not carry insurance containing the general contractor's required specifications, even though the general contractor had the certificate of insurance from the outset of the subcontractor's work. The general contractor refuses payment to the subcontractor until the subcontractor provides the general contractor with a certificate of insurance meeting the general contractor's specifications.

The problem is further complicated when the subcontractor asks his or her insurance agent to give him or her a new certificate of insurance with the appropriate specifications, to provide him or her with a retroactive insurance policy with corresponding certificate of insurance meeting the specifications, or to alter his or her existing certificate of insurance to reflect the appropriate specifications. Most agents refuse to alter the certificates of insurance as doing so potentially subjects them to license discipline and administrative fines.[3] Also, an agent doing so may incur an "errors and omission" problem.[4]

If an agent refuses to alter a certificate of insurance, the general contractor may ask the agent to issue a personal guarantee of the changes to the certificate of insurance the general contractor requires.[5] A personal guarantee by the agent may expose him or her to suit if the insurer will not honor the changes required by the general contractor and personally guaranteed by the agent.

Effect of Bill

This bill is designed to resolve the problem relating to certificates of insurance between contractors alleged by the bill's proponents. In that regard, the bill creates statutory provisions allowing a general contractor three business days to reject a certificate of insurance given to him by a subcontractor. This bill's provisions also apply to certificates of insurance required by construction contracts between general contractors, subcontractors, sub-subcontractors, and materialmen. The rejection must be in writing and must specify the reason(s) for rejection. This bill does not require the general contractor to allow the subcontractor time to cure any deficiency in the certificate of insurance causing rejection of it by the general contractor.

If a general contractor does not reject the certificate of insurance within the three day window, he or she automatically accepts it (i.e. deemed acceptance). The general contractor is still able to reject a certificate of insurance at a later date (after acceptance or automatic acceptance) as long as the rejection is in writing and specifies the reason(s) for rejection. However, the general contractor must pay the subcontractor for work done by the subcontractor up to the date of written rejection of the certificate of insurance by the general contractor.

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[3] s. 626.9541(1)(a)1., F.S. (2005); s. 626.9521, F.S. (2005); Informational Memorandum OIR-03-003M, issued by the Office of Insurance Regulation on February 21, 2003 (on file with the Insurance Committee).
[4] Florida Association of Insurance Agents, *300 Words (more or less) about Certificates of Insurance* (2006) (on file with the Insurance Committee).
[5] Id.

This bill outlines circumstances where a general contractor can withhold payment or reject work that has been completed by a subcontractor despite the general contractor's acceptance or automatic acceptance of the certificate of insurance. These circumstances are:

- If the certificate of insurance does not comply with the insurance coverage limits specified in the construction contract;
- If the certificate of insurance was knowingly and fraudulently altered or reflects coverages not in the insurance policy; or
- If the insurance policy is cancelled, nonrenewed, or materially and adversely altered during the term of the construction contract.

This bill also requires general contractors who voluntarily accept a subcontractor's certificate of insurance at the outset or who automatically accept it by operation of law after the 3 day window to pay the subcontractor for work completed up to the time the general contractor rejects the insurance policy on the basis that it is nonconforming. This bill does not require the general contractor to pay the subcontractor for work done in the three day window allowed for rejection of the certificate of insurance. Thus, the subcontractor is at risk for not getting paid for work performed, if any, during this time period.

This bill outlines circumstances where a general contractor cannot be caused to automatically accept a certificate of insurance even if he or she does not reject during the three day rejection window. These circumstances are:

- if the certificate of insurance does not comply with the insurance coverage limits specified in the construction contract,
- if the certificate of insurance was knowingly and fraudulently altered, or
- if the certificate of insurance reflects coverages not in the insurance policy

C. SECTION DIRECTORY:

Section 1 creates s. 627.442, F.S. providing provisions regarding acceptance and/or rejection of certificates of insurance by parties to a construction contract and payment on construction contracts.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On January 26, 2006, the Insurance Committee considered the bill, adopted a strike-all amendment, and reported the bill favorably with CS. The strike-all amendment made the following changes to the original text of the bill:

- Specified the general contractor has 3 business days to reject a certificate of insurance, rather than 3 days as provided in the original bill text
- Clarified that a subcontractor will be paid for work done before the certificate of insurance is accepted or deemed to be accepted
- Clarified that a general contractor can reject a certificate of insurance even after he originally accepted it or was deemed to have accepted it
- Created exceptions to the provision relating to deemed acceptance of a certificate of insurance by a general contractor. The exceptions are a policy or certificate "that does not comply with the insurance coverage limits specified in the construction contract, that was knowingly and fraudulently altered, or that reflects coverages or conditions that are not contained in the underlying policy."
- Created exceptions to the provision requiring a general contractor to pay a subcontractor for work performed. The exceptions allow a general contractor to withhold payment or reject work completed by a subcontractor if the policy or certificate: "(a) Does not comply with the insurance coverage limits specified in the construction contract; (b) Was knowingly and fraudulently altered or reflects coverages or conditions that are not contained in the underlying policy; or (c) Is cancelled, nonrenewed, or materially and adversely altered during the term of the construction contract."
- Deleted the provision in the original bill making the construction contract provision requiring insurance unenforceable if the certificate of insurance is rejected.

On February 21, 2006, the Committee on Business Regulation considered the bill, adopted one amendment, and reported the bill favorably with CS. The CS includes a provision that specifies a contractor may not reject an insurance policy based on the fact that the insurer is not rated by a national rating service.

CHAMBER ACTION

The Business Regulation Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to construction contracts; creating s. 627.442, F.S.; specifying acceptance of certain insurance provisions of a construction contract under certain circumstances; providing exceptions; prohibiting certain actions after acceptance of such provisions; providing an exception authorizing such actions under certain circumstances; authorizing contractors or subcontractors to reject certain accepted construction contract insurance provisions as nonconforming under certain circumstances; authorizing such contractors and subcontractors to withhold payment for work performed or materials supplied under certain circumstances; prohibiting rejecting certain policies of insurance on certain grounds; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 627.442, Florida Statutes, is created to read:

627.442 Construction contract insurance provisions; acceptance, rejection, or application.--

(1) If a written construction contract requires a subcontractor, sub-subcontractor, or materialman to provide an insurance policy or certificate of insurance to the general contractor or another subcontractor for work performed or materials provided, which extends coverage rights to an additional insured, the general contractor or subcontractor is deemed to have accepted the insurance policy or certificate of insurance as conforming to the written construction contract unless the general contractor or subcontractor rejects the insurance policy or certificate of insurance in writing within 3 business days after receipt of the insurance policy or certificate of insurance. The written rejection must specify the reason for rejection. However, the general contractor or subcontractor may not be deemed to have accepted an insurance policy or certificate of insurance that does not comply with the insurance coverage limits specified in the construction contract, that was knowingly and fraudulently altered, or that reflects coverages or conditions that are not contained in the underlying policy.

(2) After a general contractor or subcontractor accepts an insurance policy or certificate of insurance or is deemed to have accepted the insurance policy or certificate of insurance, a general contractor or subcontractor may not use the lack of conforming insurance as a reason to reject work previously

completed by a subcontractor or sub-subcontractor, reject materials previously supplied by a materialman, or withhold payment for work previously completed or materials previously supplied. However, the general contractor or subcontractor may reject work previously completed or materials previously supplied or withhold payment for such work or materials if the policy or certificate provided by the subcontractor, sub-subcontractor, or materialman:

(a) Does not comply with the insurance coverage limits specified in the construction contract;

(b) Was knowingly and fraudulently altered or reflects coverages or conditions that are not contained in the underlying policy; or

(c) Is canceled, nonrenewed, or materially and adversely altered during the term of the construction contract.

(3) Subsection (1) does not preclude a general contractor or subcontractor from rejecting as nonconforming an insurance policy or certificate of insurance previously accepted or deemed to have been accepted; however, such a rejection shall be in writing and shall specify the reason for rejection. A general contractor or subcontractor who rejects in writing an insurance policy or certificate of insurance as nonconforming and states the specific reason for such rejection may withhold payment for the work performed or materials supplied after the date of the rejection of the policy or certificate.

(4) A policy of insurance issued by an authorized insurer or self-insurance fund that is subject to ss. 631.901-631.932 may not be rejected as nonconforming by a general contactor on

the grounds that such authorized insurer or self-insurance fund is rated or not rated by a nationally recognized insurance rating service.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 457 CS Guardianship
SPONSOR(S): Sands and Others
TIED BILLS: HB 459 **IDEN./SIM. BILLS:** CS/CS/SB 472

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Future of Florida's Families Committee	7 Y, 0 N, w/CS	Preston	Collins
2) Civil Justice Committee		Shaddock	Bond
3) Judiciary Appropriations Committee			
4) Health & Families Council			
5)			

SUMMARY ANALYSIS

HB 457 incorporates the recommendations of the 2003 Guardianship Task Force, the Florida State Guardianship Association, the Statewide Public Guardianship Office, and the State Long-term Care Ombudsman Program within the Department of Elderly Affairs (DOEA). Provisions of the bill address:

- Creating definitions for the terms "audit" and "surrogate guardian," and amending the definition of the term "professional guardian."
- Increasing the dollar threshold required for a court to appoint a guardian ad litem to review a settlement from $15,000 to $50,000 when the settlement involves a minor.
- Creating new reporting requirements related to the appointment of emergency temporary guardians.
- Creating new requirements related to investigations of credit history and background screening for guardians, including background investigations using inkless electronic fingerprints instead of fingerprint cards.
- Decreasing the amount of time during which a guardian must complete the required instruction and education from 1 year to 4 months.
- Emphasizing the importance of an incapacitated person's right to quality of life, clarifying which rights cannot be delegated, reinforcing the significance of the right to marry, and subjecting the right to marry to court approval.
- Creating new restrictions and requirements relating to the appointment of an attorney for an alleged incapacitated person and providing for new requirements for members of examining committees.
- Creating requirements for additional information that must be included in an annual guardianship plan.
- Creating additional requirements relating to proof of payment for expenditures and disbursements made on behalf of a ward.
- Providing clerks of court with the authority to audit simplified and final accountings.
- Creating a new section of law related to the appointment of surrogate guardians.

The bill allows for the imposition of a $15 surcharge on non-criminal traffic infractions and certain criminal violations to fund a county's participation in the public guardianship program. The surcharge must be approved by either a vote of two-thirds of the board of county commissioners or a referendum approved by the county's electors. The bill also provides for an $18 surcharge to be added to the fine for all misdemeanors; $15 of which would be used to fund public guardianship programs, with the remaining $3 to be retained by the clerks of the court as a service fee.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill increases requirements and duties for a number of entities, including guardians, the clerks of court, and the Statewide Public Guardianship Office. The bill also requires the Statewide Public Guardianship Office to adopt a rule related to acceptable methods for completing credit investigations. The Florida Department of Law Enforcement must adopt a rule to establish procedures for the retention of guardian fingerprints and dissemination of search results of all arrest fingerprint cards.

Ensure lower taxes – The bill allows the imposition of a surcharge on non-criminal traffic infractions and some criminal violations to fund a county's public guardianship program. The surcharge must be approved by either a vote of two-thirds of the board of county commissioners or a referendum approved by the county's electors. The bill also provides for an additional surcharge on the fine for all misdemeanors; a portion of which would be used to fund public guardianship programs, with the remaining portion being retained by the clerks of court as a service fee.

Safeguard individual liberty – The bill contains provisions designed to reduce risk to wards and ensure that they are better served by the guardianship process.

Empower families – The bill has the potential to increase the number of individuals able to access the services of a public guardian.

B. EFFECT OF PROPOSED CHANGES:

Guardianship and Public Guardianship

Guardianship is the process designed to protect and exercise the legal rights of individuals with functional limitations that prevent them from being able to make their own decisions when they have not otherwise planned in advance for such a loss of capacity. Those individuals in need of guardianship may have dementia, Alzheimer's disease, a developmental disability, chronic mental illness or other such conditions that may limit function. In such instances, a guardian may be appointed by the court to manage some or all the affairs of another.

Prior to a guardianship being established, it must first be determined that a person lacks the capacity required to make decisions concerning his or her personal and/or financial matters and that no other less restrictive alternatives exist. Upon making such a determination, the court may appoint either a limited guardian[1] or a plenary guardian.[2] In the vast majority of cases that result in guardianship, the court will appoint a family member or close friend of the ward to act as guardian. However, when a family member or close friend is unavailable or unwilling to act as guardian, there are generally two options a court may use to provide assistance to the incapacitated person:

- Appoint a professional guardian to act on the ward's behalf when the ward has assets that may be used to pay for guardianship services provided;[3] or

[1] A limited guardian is defined as a guardian who has been appointed by the court to exercise the legal rights and powers specifically designated by court order entered after the court has found that the ward lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person or property, or after the person has voluntarily petitioned for appointment of limited guardian. *See* s. 744.102(8)(a), F.S.

[2] A plenary guardian is defined as a person who has been appointed by the court to exercise all delegable legal rights and powers of the ward after the court has found that the ward lacks the capacity to perform all of the tasks necessary to care for his or her person or property. *See* s. 744.102(8)(b), F.S.

[3] See ss. 744.102(16) and 744.334, F.S.

- Appoint a public guardian in instances where the incapacitated ward does not have enough assets to afford a professional guardian.[4]

Department of Elder Affairs, the Statewide Public Guardianship Office, and the Guardianship Task Force

In order to ensure that Florida's incapacitated residents who are indigent receive appropriate public guardianship services, the 1999 Florida Legislature created the Statewide Public Guardianship Office (SPGO). The SPGO is responsible for establishing local offices of public guardian and ensuring the registration and education of public and professional guardians.[5] Currently, public guardianship services are provided to persons in 22 counties through 15 local offices of public guardian and during 2003, those 15 offices served a total of 1716 wards. In May 2003, the SPGO was transferred to the direct supervision of the Secretary of Elderly Affairs.[6]

The 2003 Legislature also created the Guardianship Task Force within Department of Elderly Affairs (DOEA), for the purpose of recommending specific statutory and other changes for achieving best practices in guardianship and for achieving citizen access to quality guardianship services. The final report was submitted to the Secretary of Elder Affairs on January 1, 2005.[7]

Public Guardianship Funding Through Court Filing Fees

Until July 2004, each county was authorized under s. 28.241, F.S., to impose, by ordinance or by special or local law, a fee of up to $15 for each civil action filed, for the establishment, maintenance, or supplementation of a public guardian. However, this authority was rescinded as part of the legislative implementation of Constitutional Revision 7 to Article V of the State Constitution. Revision 7, adopted by the voters in 1998, required the state to shift primary costs and funding for the operation of the state courts system to the state and to reallocate other costs and expenses among the local governments and other users and participants in the state courts system. As part of this implementation, all filing fees for trial and appellate proceedings were regulated by the state, with a portion to revert directly to the Department of Revenue to be used to fund court proceedings. However, the $15 allowable for additional expenses that counties were formerly authorized to implement in order to fund public guardianship programs was also removed.[8]

HB 457

The bill incorporates the recommendations of the Guardianship Task Force, the Florida State Guardianship Association, the Statewide Public Guardianship Office, and the State Long-term Care Ombudsman Program within the Department of Elder Affairs. Specifically, the bill contains provisions related to the following:

Definitions

The bill defines the term "audit" for purposes of Chapter 744 as a systematic review of financial documents in accordance with generally accepted auditing standards. The term "surrogate guardian" is defined as a professional guardian who is designated by a guardian to exercise the powers of the guardian if the guardian is unavailable to act. A change to the definition of professional guardian clarifies that professional guardians do not have to receive compensation in order to serve as professional guardians as long as they meet all statutory requirements.

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[4] See s. 744.703, F.S.
[5] See s. 744.7021, F.S. and Chapter 99-227, Laws of Florida.
[6] See Chapter 2003-57, Laws of Florida.
[7] See Chapter 2003-57, Laws of Florida.
[8] See Chapter 2003-402, Laws of Florida.

Natural Guardians

The bill clarifies that if a parent of a minor child dies, the surviving parent remains as the sole natural guardian even if he or she remarries. Regarding claims or causes of action on behalf of minor children, the bill clarifies that natural guardians are authorized to make certain financial decisions for minor children when the aggregate amount is not more than $15,000. Natural guardians are precluded from using a ward's property for the guardian's benefit or to satisfy the guardian's support obligation to the ward without court approval.

Guardian ad Litem Appointments for Minors

- The court is authorized to appoint a guardian ad litem to represent the minor's interest, before approving a settlement in which a minor has a damages claim in which the gross settlement is more than $15,000, and the court is required to appoint a guardian ad litem where the gross settlement is $50,000 or more;

- The guardian ad litem appointment is required to be without the necessity of bond or notice;

- The duty of the guardian ad litem is to protect the minor's interests in accordance with Florida Probate Rules;

- A court is not required to appoint a guardian ad litem if a guardian has previously been appointed who does not have an adverse interest to the minor; however, a court may appoint a guardian ad litem if the court believes it necessary to protect the minor's interests; and

- The court is required to award reasonable fees and costs to the guardian ad litem, unless waived, to be paid against the gross proceeds of the settlement.

Emergency Temporary Guardians

- The bill increases the initial length of time of an emergency temporary guardianship from 60 days to 90 days;

- An emergency temporary guardian is a guardian for the property and, as such, must include certain information related to accounting and inventory in the final report;

- In instances where the emergency temporary guardian is a guardian of the person, the final report must include such information as residential placement, medical condition, mental health and rehabilitative services, and the social condition of the ward; and

- An emergency temporary guardian is required to file a final report within 30 days upon expiration of the guardianship and a copy of the final report must be provided to the successor guardian and the ward.

Standby Guardianships

- The court may appoint a standby guardian upon petition by the natural guardians or a legally appointed guardian;
- The court may also appoint an alternate if the standby guardian does not serve or ceases to serve;
- The court must serve a notice of hearing on the parents, next of kin, and any currently serving guardian unless notice is waived in writing or by the court for good cause shown; and

- The standby guardian must submit to a credit and criminal investigation.

Credit and Criminal Background Checks

- If a credit or criminal investigation is required, the court must consider investigation results before the appointment of a guardian;
- The court may require a credit investigation at any time;
- The clerk of the court is required to keep a file on each appointed guardian, retain investigation documents, and is required to collect up to $7.50 from each professional guardian for handling and processing of files;
- The court and the Statewide Public Guardianship Office are required to accept the satisfactory completion of a criminal background investigation by any method stated in these provisions;
- A guardian complies with background requirements by paying for and undergoing an electronic fingerprint criminal history check or a criminal history record check using a fingerprint card. The results of the criminal history check shall be immediately forwarded to the clerk who will maintain the results in the guardian's file, and the Statewide Public Guardianship Office;
- A professional guardian is required to complete and pay for a level 2 background screening every five years, a level 1 background screening every two years, unless screened using inkless electronic fingerprinting equipment, and a credit history investigation at least once every two years after appointment;
- Effective December 15, 2006, all fingerprints electronically submitted to Department of Law Enforcement shall be retained as provided by rule and entered into the statewide automated fingerprint identification system. The Department of Law Enforcement shall search all arrest fingerprint cards against those in the system, reporting any matches to the clerk of the court;
- The clerk of the court is required to forward any arrest records to the Statewide Public Guardianship Office within five days upon receipt;
- Guardians who elect to participate in electronic criminal history checks are required to pay a fee, unless the clerk of the court absorbs the fee;
- The Statewide Public Guardianship Office is required to adopt a rule detailing acceptable methods for completing a credit investigation, and may set a fee of up to $25 to reimburse costs; and
- The Statewide Public Guardianship Office may inspect at any time the results of any credit or criminal history check of a public or professional guardian.

Procedures to Determine Incapacity

- Attorneys representing the ward must be appointed from an attorney registry compiled by the circuit's Article V indigent services committee and must, effective January 1, 2007, have completed a minimum of 8 hours education in guardianship;
- A member appointed is precluded from subsequently being appointed as a guardian of the person;
- Each member must file an affidavit certifying completion of course requirements or that they will be completed within four months upon appointment;
- The initial training and continuing education program must be established by the Statewide Public Guardianship Office, in conjunction with other listed entities; and
- The committee's report must include the names of all persons present during the member's examination, the signature of each member, and the date and time each member examined the alleged incapacitated person.

Voluntary Guardianships

- A guardian must include in the annual report filed with the court a certificate from a licensed physician who examined the ward no more than 90 days before the annual report is filed with the court, which certifies that the ward is competent to understand the nature of the guardianship and is also aware of the ward's authority to delegate powers to the voluntary guardian.

Surrogate Guardians

- A guardian may designate a surrogate guardian if the guardian is unavailable, but the surrogate must be a professional guardian;
- A guardian must file a petition with the court requesting permission to designate a surrogate;
- Upon approval, the court's order must contain certain information, including the duration of appointment, which is up to 30 days, extendable for good cause; and
- The guardian is liable for the acts of the surrogate guardian and may terminate the surrogate's authority by filing a written notice with the court.

Other Provisions

- An incapacitated person retains the right to receive necessary services and rehabilitation necessary to maximize the quality of life and the right to marry unless the right to enter into a contract has been removed, in which case the court must approve the right to marry;
- Professional and public guardians are required to ensure that each of the guardian's wards is personally visited by the guardian or staff at least once every calendar quarter, unless appointed only as a guardian of the property. During the visit, the guardian or staff person must assess the ward's physical appearance and condition, current living situation, and need for additional services;
- The annual guardianship report is required to be filed by April 1, rather than within 90 days after the end of the calendar year, which is current law;
- Annual guardianship plans for minors must include information about the minor's residence, medical and mental health conditions, and treatment and rehabilitation needs of the minor, and the minor's educational progress;
- Property that is under the guardian's control, including any trust of which the ward is a beneficiary but not under the control or administration of the guardian, is not subject to annual accounting requirements;
- If the ward dies, the guardian must file a final report with the court within 45 days after being served with letters of administration or curatorship, rather than the prompt filing requirement under current law; and
- Regarding the discharge of a guardian named as a personal representative for the ward's estate, any interested person may file a notice of a hearing on any objections filed by the beneficiaries of the ward's estate. If a notice is not served within 90 days after filing, objections are considered abandoned.

C. SECTION DIRECTORY:

Section 1. Amends s. 744.102, F.S., relating to definitions.

Section 2. Amends s. 744.1083, F.S., relating to professional guardian registration.

Section 3. Amends s. 744.301, F.S., relating to natural guardians.

Section 4. Creates s. 744.3025, F.S., relating to claims of minors.

Section 5. Amends s. 744.3031, F.S., relating to emergency temporary guardianship.

Section 6. Amends s. 744.304, F.S., relating to standby guardianship.

Section 7. Amends s. 744.3115, F.S., relating to advance directives for health care.

Section 8. Amends s. 744.3135, F.S., relating to credit and criminal investigation.

Section 9. Amends s. 744.3145, F.S., relating to guardian education requirements.

Section 10. Amends s. 744.3215, F.S., relating to rights of persons determined to be incapacitated.

Section 11. Amends s. 744.331, F.S., relating to procedures to determine incapacity.

Section 12. Amends s. 744.341, F.S., relating to voluntary guardianship.

Section 13. Amends s. 744.361, F.S., relating to powers and duties of a guardian.

Section 14. Amends s. 744.365, F.S., relating to verified inventory.

Section 15. Amends s. 744.367, F.S., relating to the duty to file an annual guardianship report.

Section 16. Amends s. 744.3675, F.S., relating to the annual guardianship plan.

Section 17. Amends s. 744.3678, F.S., relating to annual accounting.

Section 18. Amends s. 744.3679, F.S., relating to simplified accounting procedures in certain cases.

Section 19. Amends s. 744.368, F.S., relating to responsibilities of the clerk of the circuit court.

Section 20. Amends s. 744.441, FS., relating to the powers of a guardian upon court approval.

Section 21. Creates s. 744.442, F.S., relating to the delegation of authority.

Section 22. Amends s. 744.464, F.S., relating to the restoration to capacity.

Section 23. Amends s. 744.474, F.S., relating to reasons for removing a guardian.

Section 24. Amends s. 744.511, F.S., relating to the accounting upon removal of a guardian.

Section 25. Amends s. 744.527, F.S., relating to final reports and application for discharge of guardian.

Section 26. Amends s. 744.528, F.S., relating to the discharge of a guardian named as a personal representative.

Section 27. Amends s. 744.708, F.S., relating to reports and standards.

Section 28. Amends s. 765.101, F.S., relating to definitions.

Section 29. Amends s. 28.345, F.S., relating to the exemption from court-related fees and charges.

Section 30. Amends s. 121.091, F.S., relating to benefits payable.

Section 31. Amends s. 121.4501, F.S., relating to Public Employee Optional Retirement Program.

Section 32. Amends s. 709.08, F.S., relating to durable power of attorney.

Section 33. Amends s. 744.1085, F.S., relating to the regulation of professional guardians.

Section 34. Reenacts s. 117.107, F.S., relating to prohibited acts.

Section 35. Amends s. 318.18, F.S., relating to amount of civil penalties.

Section 36. Creates s. 938.065, F.S., relating to additional costs for public guardianship programs.

Section 37. Provides for an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Persons involved in guardianship will be required to have additional training. These persons may also have to spend more time drafting reports regarding a person's capacity. The cost of these reports may be borne by the ward. Guardians will have to visit their wards more frequently.

D. FISCAL COMMENTS:

The bill allows for the imposition of a $15 surcharge on non-criminal traffic infractions and criminal violations listed in s. 318.17, F.S., to fund a county's public guardianship program. The surcharge must be approved by either a vote of two-thirds of the board of county commissioners or a referendum approved by the county's electors. The bill also requires an $18 surcharge on all misdemeanors; $15 of which would be used to fund public guardianship programs, with the remaining $3 going to the clerks of court as a service fee.

According to the Department of Highway Safety and Motor Vehicles in 2004 the traffic statistics for criminal traffic, non-criminal moving, and non-moving infractions were as follows:

Total Violations: 4,418,401
Guilty: 434,691
Pending Disposition: 563,948
Adjudication withheld by Judge: 515,594
Adjudication withheld by Clerk: 541,581

Guilty: $6,520,365
Adjudication withheld by Judge: $7,733,910
Total: $14,254,275

These numbers assume 100% collection, that each county would utilize this mechanism for public guardianship funding, and that fines are imposed for each adjudication withheld.

The department estimates there is a minimum of 5,000 to 10,000 indigent and incapacitated persons per year that require the services of a public guardian. Currently, public guardians serve slightly over 1,700 of those individuals. The majority of the state does not have access to a public guardian, and even those areas that do have a public guardian, services are not readily available because the current office is at capacity. These provisions replace the public guardianship funding that was removed in July 2004 in implementing Article V revisions.

The number of misdemeanors where a fine would be imposed for 2004 was:191,432. Multiplying that figure by $15 (not the full $18) results in a possible $2,871,480 for public guardianship. Again, this assumes 100% collection. The clerks of court would retain $574,296 in service fees.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill requires the Statewide Public Guardianship Office to adopt a rule related to acceptable methods for completing credit investigations. It also requires the Florida Department of Law Enforcement to adopt a rule to establish procedures for the retention of guardian fingerprints and dissemination of search results of all arrest fingerprint cards.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 28, 2006, the Future of Florida's Families Committee adopted 3 amendments which do the following:

- Removes the requirement that professional guardians provide the Statewide Public Guardianship Office (SPGO) with the names, address, and dates of birth for each member of their partnerships, associations, persons owning at least 10% of their corporation, or persons providing guardian delegated services;
- Removes the requirement that a certified public accountant conduct the public guardian's ward file review and requires the SPGO to conduct such review;
- Removes the prohibition on the executive director of a public guardian office from being included in the ratio of staff to wards; and
- Restores current language related to the termination of a voluntary guardianship.

The bill was reported favorably as a committee substitute.

CHAMBER ACTION

The Future of Florida's Families Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to guardianship; amending s. 744.102, F.S.; defining the terms "audit" and "surrogate guardian"; amending s. 744.1083, F.S.; revising provisions relating to identification information provided by professional guardians for registration; providing that the Statewide Public Guardianship Office need not review credit and criminal investigations from a state college or university before registering the institution as a professional guardian; amending s. 744.301, F.S.; providing that in the event of death, the surviving parent is the sole natural guardian of a minor; prohibiting a natural guardian from using the property of the ward for the guardian's benefit without a court order; creating s. 744.3025, F.S.; authorizing a court to appoint a guardian ad litem to represent a minor's interest in certain claims that exceed a specified amount; requiring a court to appoint a guardian ad litem to represent a minor's interest in

certain claims that exceed a specified amount; providing that a court need not appoint a guardian ad litem under certain circumstances; requiring a court to award reasonable fees and costs to the guardian ad litem; amending s. 744.3031, F.S.; increasing the time an emergency temporary guardian may serve; increasing the time of an extension; requiring an emergency temporary guardian to file a final report; providing for the contents of the final report; amending s. 744.304, F.S.; specifying the persons who may file a petition for a standby guardian; requiring that notice of the appointment hearing be served on the ward's next of kin; clarifying when a standby guardian may assume the duties of guardian; requiring that each standby guardian submit to credit and criminal background checks; amending s. 744.3115, F.S.; defining the term "health care decision"; amending s. 744.3135, F.S.; providing procedures for completing a guardian's criminal background investigation; authorizing a guardian to use inkless electronic fingerprinting equipment that is available for background investigations of public employees; providing that a guardian need not be rescreened if he or she uses certain inkless electronic fingerprinting equipment; providing for fees; requiring the Statewide Public Guardianship Office to adopt a rule for credit investigations of guardians; amending s. 744.3145, F.S.; reducing the time in which a guardian must complete the education courses; amending s. 744.3215, F.S.; providing that an incapacitated person retains the

right to receive services and rehabilitation necessary to maximize the quality of the person's life; revising provisions relating to rights that may be removed from a person determined incapacitated; amending s. 744.331, F.S.; requiring that the court appoint an attorney for an alleged incapacitated person from a specified registry; requiring attorneys to complete certain training programs; providing that a member of the examining committee may not be related to or associated with certain persons; prohibiting a person who served on an examining committee from being appointed as the guardian; requiring each member of an examining committee to file an affidavit stating that he or she has completed or will timely complete the mandatory training; providing for training programs; requiring each member to report the time and date that he or she examined the person alleged to be incapacitated, the names of all persons present during the examination, and the response and name of each person supplying an answer posed to the examinee; providing for an award of attorney's fees; amending s. 744.341, F.S.; requiring the voluntary guardian to include certain information in the annual report; amending s. 744.361, F.S.; requiring a professional guardian to ensure that each of his or her wards is personally visited at least quarterly; providing for the assessment of certain conditions during the personal visit; providing an exemption; amending s. 744.365, F.S.; requiring that the verified inventory include information on any trust to

which a ward is a beneficiary; amending s. 744.367, F.S.; requiring that the annual report of the guardian filing on a calendar-year basis be filed on or before a specified date; exempting all minor wards from service of the annual report; amending s. 744.3675, F.S.; requiring that the annual guardianship plan include information on the mental condition of the ward; providing for an annual guardianship plan for wards who are minors; amending s. 744.3678, F.S.; providing that property of the ward which is not under the control of the guardian, including certain trusts, is not subject to annual accounting; requiring certain documentation for the annual accounting; amending s. 744.3679, F.S.; removing a provision prohibiting the clerk of the court from having responsibility for monitoring or auditing accounts in certain cases; amending s. 744.368, F.S.; requiring that the verified inventory and the accountings be audited within a specified time period; amending s. 744.441, F.S.; requiring the court to retain oversight for assets of a ward transferred to a trust; creating s. 744.442, F.S.; providing that a guardian may designate a surrogate guardian to exercise the powers of the guardian if the guardian is unavailable to act; requiring the surrogate guardian to be a professional guardian; providing the procedures to be used in appointing a surrogate guardian; providing the duties of a surrogate guardian; requiring the guardian to be liable for the acts of the surrogate guardian; authorizing the guardian to terminate the

services of the surrogate guardian by filing a written notice of the termination with the court; amending s. 744.464, F.S.; removing the state attorney from the list of persons to be served a notice of a hearing on restoration of capacity; removing a time limitation on the filing of a suggestion of capacity; amending s. 744.474, F.S.; revising provisions relating to removal of a guardian who is not a family member; revising provisions relating to removal of a guardian upon a showing that removal of the current guardian is in the best interest of the ward; amending s. 744.511, F.S.; providing that a ward who is a minor need not be served with the final report of a removed guardian; amending s. 744.527, F.S.; providing that final reports for a deceased ward be filed at a specified time; amending s. 744.528, F.S.; providing for a notice of the hearing for objections to a report filed by a guardian; amending s. 744.708, F.S.; revising provisions relating to audits and investigations of each office of public guardian; requiring a public guardian to ensure that each of his or her wards is personally visited at least quarterly; providing for the assessment of certain conditions during the personal visit; providing for additional distribution of a specified annual report; deleting a definition; amending s. 765.101, F.S.; redefining the term "health care decision" to include informed consent for mental health treatment services; amending s. 28.345, F.S.; revising provisions relating to exemptions from paying court-related fees and charges;

amending ss. 121.091, 121.4501, 709.08, and 744.1085, F.S.; conforming cross-references; reenacting s. 117.107(4), F.S., relating to prohibited acts of a notary public, to incorporate the amendment made to s. 744.3215, F.S., in a reference thereto; amending s. 318.18, F.S.; authorizing a county to impose a surcharge on certain civil penalties to fund local participation in the public guardianship program; prescribing prerequisites for imposing the surcharge; providing a limit on the surcharge; creating s. 938.065, F.S.; requiring that a specified surcharge be assessed against all misdemeanor offenses; providing that the clerk of the court may retain a service charge; directing that the funds collected be used to fund public guardianship programs; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 744.102, Florida Statutes, is amended to read:

744.102 Definitions.--As used in this chapter, the term:

(1) "Attorney for the alleged incapacitated person" means an attorney who represents the alleged incapacitated person. The ~~Such~~ attorney shall represent the expressed wishes of the alleged incapacitated person to the extent it is consistent with the rules regulating The Florida Bar.

(2) "Audit" means a systematic review of financial documents with adherence to generally accepted auditing standards.

(3) ~~(2)~~ "Clerk" means the clerk or deputy clerk of the court.

(4) ~~(3)~~ "Corporate guardian" means a corporation authorized to exercise fiduciary or guardianship powers in this state and includes a nonprofit corporate guardian.

(5) ~~(4)~~ "Court" means the circuit court.

(6) ~~(5)~~ "Court monitor" means a person appointed by the court under ~~pursuant to~~ s. 744.107 to provide the court with information concerning a ward.

(7) ~~(6)~~ "Estate" means the property of a ward subject to administration.

(8) ~~(7)~~ "Foreign guardian" means a guardian appointed in another state or country.

(9) ~~(8)~~ "Guardian" means a person who has been appointed by the court to act on behalf of a ward's person or property, or both.

(a) "Limited guardian" means a guardian who has been appointed by the court to exercise the legal rights and powers specifically designated by court order entered after the court has found that the ward lacks the capacity to do some, but not all, of the tasks necessary to care for his or her person or property, or after the person has voluntarily petitioned for appointment of a limited guardian.

(b) "Plenary guardian" means a person who has been appointed by the court to exercise all delegable legal rights

and powers of the ward after the court has found that the ward lacks the capacity to perform all of the tasks necessary to care for his or her person or property.

(10) ~~(9)~~ "Guardian ad litem" means a person who is appointed by the court having jurisdiction of the guardianship or a court in which a particular legal matter is pending to represent a ward in that proceeding.

(11) ~~(10)~~ "Guardian advocate" means a person appointed by a written order of the court to represent a person with developmental disabilities under s. 393.12. As used in this chapter, the term does not apply to a guardian advocate appointed for a person determined incompetent to consent to treatment under s. 394.4598.

(12) ~~(11)~~ "Incapacitated person" means a person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the ~~such~~ person.

(a) To "manage property" means to take those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income.

(b) To "meet essential requirements for health or safety" means to take those actions necessary to provide the health care, food, shelter, clothing, personal hygiene, or other care without which serious and imminent physical injury or illness is more likely than not to occur.

(13) ~~(12)~~ "Minor" means a person under 18 years of age whose disabilities have not been removed by marriage or otherwise.

(14) ~~(13)~~ "Next of kin" means those persons who would be heirs at law of the ward or alleged incapacitated person if the ~~such~~ person were deceased and includes the lineal descendants of the ~~such~~ ward or alleged incapacitated person.

(15) ~~(14)~~ "Nonprofit corporate guardian" means a nonprofit corporation organized for religious or charitable purposes and existing under the laws of this state.

(16) ~~(15)~~ "Preneed guardian" means a person named in a written declaration to serve as guardian in the event of the incapacity of the declarant as provided in s. 744.3045.

(17) ~~(16)~~ "Professional guardian" means any guardian who ~~receives or~~ has at any time ~~received compensation for services~~ rendered services to three or more ~~than two~~ wards as their guardian. A person serving as a guardian for two or more relatives as defined in s. 744.309(2) is not considered a professional guardian. A public guardian shall be considered a professional guardian for purposes of regulation, education, and registration.

(18) ~~(17)~~ "Property" means both real and personal property or any interest in it and anything that may be the subject of ownership.

(19) ~~(18)~~ "Standby guardian" means a person empowered to assume the duties of guardianship upon the death or adjudication of incapacity of the last surviving natural or appointed guardian.

(20) "Surrogate guardian" means a guardian designated according to s. 744.442.

(21) ~~(19)~~ "Totally incapacitated" means incapable of exercising any of the rights enumerated in s. 744.3215(2) and (3).

(22) ~~(20)~~ "Ward" means a person for whom a guardian has been appointed.

Section 2. Subsections (3), (7), and (10) of section 744.1083, Florida Statutes, are amended to read:

744.1083 Professional guardian registration.--

(3) Registration must include the following:

(a) Sufficient information to identify the professional guardian, as follows:

1. If the professional guardian is a natural person, the name, address, date of birth, and employer identification or social security number of the person ~~professional guardian~~.

2. ~~(b)~~ If the professional guardian is a partnership or association, the name, address, and ~~date of birth of every member, and the~~ employer identification number of the entity ~~partnership or association~~.

~~(c) If the professional guardian is a corporation, the name, address, and employer identification number of the corporation; the name, address, and date of birth of each of its directors and officers; the name of its resident agent; and the name, address, and date of birth of each person having at least a 10-percent interest in the corporation.~~

~~(d) The name, address, date of birth, and employer identification number, if applicable, of each person providing~~

~~guardian-delegated financial or personal guardianship services for wards.~~

(b) ~~(e)~~ Documentation that the bonding and educational requirements of s. 744.1085 have been met.

(c) ~~(f)~~ Sufficient information to distinguish a guardian providing guardianship services as a public guardian, individually, through partnership, corporation, or any other business organization.

(7) A trust company, a state banking corporation or state savings association authorized and qualified to exercise fiduciary powers in this state, or a national banking association or federal savings and loan association authorized and qualified to exercise fiduciary powers in this state, may, but is not required to, register as a professional guardian under this section. If a trust company, state banking corporation, state savings association, national banking association, or federal savings and loan association described in this subsection elects to register as a professional guardian under this subsection, the requirements of subsections (3) and (4) do not apply and the registration must include only the name, address, and employer identification number of the registrant, the name and address of its registered agent, if any, and the documentation described in paragraph (3)(b) ~~(e)~~.

(10) A state college or university or an independent college or university described in s. 1009.98(3)(a), may, but is not required to, register as a professional guardian under this section. If a state college or university or independent college or university elects to register as a professional guardian

under this subsection, the requirements of subsections (3) and (4) ~~subsection (3)~~ do not apply and the registration must include only the name, address, and employer identification number of the registrant.

Section 3. Section 744.301, Florida Statutes, is amended to read:

744.301 Natural guardians.--

(1) The mother and father jointly are natural guardians of their own children and of their adopted children, during minority. If one parent dies, the surviving parent remains the sole natural guardian even if he or she ~~the natural guardianship shall pass to the surviving parent, and the right shall continue even though the surviving parent~~ remarries. If the marriage between the parents is dissolved, the natural guardianship belongs ~~shall belong~~ to the parent to whom ~~the~~ custody of the child is awarded. If the parents are given joint custody, then both ~~shall~~ continue as natural guardians. If the marriage is dissolved and neither the father nor the mother is given custody of the child, neither shall act as natural guardian of the child. The mother of a child born out of wedlock is the natural guardian of the child and is entitled to primary residential care and custody of the child unless a court of competent jurisdiction enters an order stating otherwise.

(2) ~~The~~ Natural ~~guardian or~~ guardians are authorized, on behalf of any of their minor children, to:

(a) Settle and consummate a settlement of any claim or cause of action accruing to any of their minor children for damages to the person or property of any of said minor children;

(b) Collect, receive, manage, and dispose of the proceeds of any such settlement;

(c) Collect, receive, manage, and dispose of any real or personal property distributed from an estate or trust;

(d) Collect, receive, manage, and dispose of and make elections regarding the proceeds from a life insurance policy or annuity contract payable to, or otherwise accruing to the benefit of, the child; and

(e) Collect, receive, manage, dispose of, and make elections regarding the proceeds of any benefit plan as defined by s. 710.102, of which the minor is a beneficiary, participant, or owner,

without appointment, authority, or bond, when the amounts received, in the aggregate, do ~~amount involved in any instance does~~ not exceed $15,000.

(3) All instruments executed by a natural guardian for the benefit of the ward under the powers specified ~~provided for~~ in subsection (2) shall be binding on the ward. The natural guardian may not, without a court order, use the property of the ward for the guardian's benefit or to satisfy the guardian's support obligation to the ward.

~~(4)(a) In any case where a minor has a claim for personal injury, property damage, or wrongful death in which the gross settlement for the claim of the minor exceeds $15,000, the court may, prior to the approval of the settlement of the minor's claim, appoint a guardian ad litem to represent the minor's interests. In any case in which the gross settlement involving a~~

~~minor equals or exceeds $25,000, the court shall, prior to the approval of the settlement of the minor's claim, appoint a guardian ad litem to represent the minor's interests. The appointment of the guardian ad litem must be without the necessity of bond or a notice. The duty of the guardian ad litem is to protect the minor's interests. The procedure for carrying out that duty is as prescribed in the Florida Probate Rules. If a legal guardian of the minor has previously been appointed and has no potential adverse interest to the minor, the court may not appoint a guardian ad litem to represent the minor's interests, unless the court determines that the appointment is otherwise necessary.~~

~~(b) Unless waived, the court shall award reasonable fees and costs to the guardian ad litem to be paid out of the gross proceeds of the settlement.~~

Section 4. Section 744.3025, Florida Statutes, is created to read:

744.3025 Claims of minors.--

(1)(a) The court may appoint a guardian ad litem to represent the minor's interest before approving a settlement of the minor's portion of the claim in any case in which a minor has a claim for personal injury, property damage, wrongful death, or other cause of action in which the gross settlement of the claim exceeds $15,000.

(b) The court shall appoint a guardian ad litem to represent the minor's interest before approving a settlement of the minor's claim in any case in which the gross settlement involving a minor equals or exceeds $50,000.

(c) The appointment of the guardian ad litem must be without the necessity of bond or notice.

(d) The duty of the guardian ad litem is to protect the minor's interests as described in the Florida Probate Rules.

(e) A court need not appoint a guardian ad litem for the minor if a guardian of the minor has previously been appointed and that guardian has no potential adverse interest to the minor. A court may appoint a guardian ad litem if the court believes a guardian ad litem is necessary to protect the interests of the minor.

(2) Unless waived, the court shall award reasonable fees and costs to the guardian ad litem to be paid out of the gross proceeds of the settlement.

Section 5. Subsection (3) of section 744.3031, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

744.3031 Emergency temporary guardianship.--

(3) The authority of an emergency temporary guardian expires 90 ~~60~~ days after the date of appointment or when a guardian is appointed, whichever occurs first. The authority of the emergency temporary guardian may be extended for an additional 90 ~~30~~ days upon a showing that the emergency conditions still exist.

(8)(a) An emergency temporary guardian shall file a final report no later than 30 days after the expiration of the emergency temporary guardianship.

(b) An emergency temporary guardian is a guardian for the property. The final report must consist of a verified inventory

of the property, as provided in s. 744.365, as of the date the letters of emergency temporary guardianship were issued, a final accounting that gives a full and correct account of the receipts and disbursements of all the property of the ward over which the guardian had control, and a statement of the property of the ward on hand at the end of the emergency temporary guardianship. If the emergency temporary guardian becomes the successor guardian of the property, the final report must satisfy the requirements of the initial guardianship report for the guardian of the property as provided in s. 744.362.

(c) If the emergency temporary guardian is a guardian of the person, the final report must summarize the activities of the temporary guardian with regard to residential placement, medical condition, mental health and rehabilitative services, and the social condition of the ward to the extent of the authority granted to the temporary guardian in the letters of guardianship. If the emergency temporary guardian becomes the successor guardian of the person, the report must satisfy the requirements of the initial report for a guardian of the person as stated in s. 744.362.

(d) A copy of the final report of the emergency temporary guardianship shall be served on the successor guardian and the ward.

Section 6. Section 744.304, Florida Statutes, is amended to read:

744.304 Standby guardianship.--

(1) Upon a petition by the natural guardians or a guardian appointed under s. 744.3021, the court may appoint a standby

guardian of the person or property of a minor ~~or consent of both parents, natural or adoptive, if living, or of the surviving parent, a standby guardian of the person or property of a minor may be appointed by the court~~. The court may also appoint an alternate to the guardian to act if the standby guardian does not serve or ceases to serve after appointment. Notice of a hearing on the petition must be served on the parents, natural or adoptive, and on any guardian currently serving unless the notice is waived in writing by them or waived by the court for good cause shown ~~shall renounce, die, or become incapacitated after the death of the last surviving parent of the minor~~.

(2) Upon petition of a currently serving guardian, a standby guardian of the person or property of an incapacitated person may be appointed by the court. Notice of the hearing shall be served on the ward's next of kin.

(3) The standby guardian or alternate shall be empowered to assume the duties of guardianship ~~his or her office~~ immediately on the death, removal, or resignation of the guardian of a minor, or on the death or adjudication of incapacity of the last surviving natural guardian ~~or adoptive parent~~ of a minor, or upon the death, removal, or resignation of the guardian for an adult. The~~; however, such a~~ guardian of the ward's property may not be empowered to deal with the ward's property, other than to safeguard it, before ~~prior to~~ issuance of letters of guardianship. If the ward ~~incapacitated person~~ is over the age of 18 years, the court shall conduct a hearing as provided in s. 744.331 before confirming the appointment of the

standby guardian, unless the ward has previously been found to be incapacitated.

(4) Within 20 days after assumption of duties as guardian, a standby guardian shall petition for confirmation of appointment. If the court finds the standby guardian to be qualified to serve as guardian under ~~pursuant to~~ ss. 744.309 and 744.312, appointment of the guardian must be confirmed. Each guardian so confirmed shall file an oath in accordance with s. 744.347, ~~and~~ shall file a bond, and shall submit to a credit and criminal investigation as set forth in s. 744.3135, if required. Letters of guardianship must then be issued in the manner provided in s. 744.345.

(5) After the assumption of duties by a standby guardian, the court shall have jurisdiction over the guardian and the ward.

Section 7. Section 744.3115, Florida Statutes, is amended to read:

744.3115 Advance directives for health care.--In each proceeding in which a guardian is appointed under this chapter, the court shall determine whether the ward, prior to incapacity, has executed any valid advance directive under ~~pursuant to~~ chapter 765. If any ~~such~~ advance directive exists, the court shall specify in its order and letters of guardianship what authority, if any, the guardian shall exercise over the surrogate. Pursuant to the grounds listed in s. 765.105, the court, upon its own motion, may, with notice to the surrogate and any other appropriate parties, modify or revoke the authority of the surrogate to make health care decisions for the

ward. For purposes of this section, the term "health care decision" has the same meaning as in s. 765.101.

Section 8. Section 744.3135, Florida Statutes, is amended to read:

744.3135 Credit and criminal investigation.--

(1) The court may require a nonprofessional guardian and shall require a professional or public guardian, and all employees of a professional guardian who have a fiduciary responsibility to a ward, to submit, at their own expense, to an investigation of the guardian's credit history and to undergo level 2 background screening as required under s. 435.04. If a credit or criminal investigation is required, the court must consider the results of any investigation before appointing a guardian. At any time, the court may require a guardian or the guardian's employees to submit to an investigation of the person's credit history and complete a level 1 background screening as set forth in s. 435.03. The court shall consider the results of any investigation when reappointing a guardian. The clerk of the court shall maintain a file on each guardian appointed by the court and retain in the file documentation of the result of any investigation conducted under this section. A professional guardian must pay the clerk of the court a fee of up to $7.50 for handling and processing professional guardian files.

(2) The court and the Statewide Public Guardianship Office shall accept the satisfactory completion of a criminal background investigation by any method described in this

subsection. A guardian satisfies the requirements of this section by undergoing:

(a) An inkless electronic fingerprint criminal background investigation. A guardian may use any inkless electronic fingerprinting equipment used for criminal background investigations of public employees. The guardian shall pay the actual costs incurred by the Federal Bureau of Investigation and the Department of Law Enforcement for the criminal background investigation. The agency that operates the equipment used by the guardian may charge the guardian an additional fee, not to exceed $10, for the use of the equipment. The agency completing the investigation must immediately send the results of the criminal background investigation to the clerk of the court and the Statewide Public Guardianship Office. The clerk of the court shall maintain the results in the guardian's file and shall make the results available to the court; or

(b) A criminal background investigation using a fingerprint card. The clerk of the court shall obtain fingerprint cards from the Federal Bureau of Investigation and make them available to guardians. Any guardian who is so required shall have his or her fingerprints taken and forward the proper fingerprint card along with the necessary fee to the ~~Florida~~ Department of Law Enforcement for processing. ~~The professional guardian shall pay to the clerk of the court a fee of up to $7.50 for handling and processing professional guardian files.~~ The results of the fingerprint card background investigations ~~checks~~ shall be forwarded to the clerk of the court who shall maintain the results in the guardian's ~~a~~

~~guardian~~ file and ~~shall~~ make the results available to the court and the Statewide Public Guardianship Office.

(3)(a) A professional guardian, and each employee of a professional guardian who has a fiduciary responsibility to a ward, must complete, at his or her own expense, a level 2 background screening as set forth in s. 435.04 before and at least once every 5 years after the date the guardian is appointed. A professional guardian, and each employee of a professional guardian who has a fiduciary responsibility to a ward, must complete, at his or her own expense, a level 1 background screening as set forth in s. 435.03 at least once every 2 years after the date the guardian is appointed. However, a person is not required to resubmit fingerprints for a criminal background investigation if he or she has been screened using inkless electronic fingerprinting equipment that is capable of notifying the clerk of the court of any crime charged against the person in this state or elsewhere, as appropriate.

(b) Effective December 15, 2006, all fingerprints electronically submitted to the Department of Law Enforcement under this section shall be retained by the Department of Law Enforcement in a manner provided by rule and entered in the statewide automated fingerprint identification system authorized by s. 943.05(2)(b). The fingerprints shall thereafter be available for all purposes and uses authorized for arrest fingerprint cards entered in the Criminal Justice Information Program under s. 943.051.

(c) Effective December 15, 2006, the Department of Law Enforcement shall search all arrest fingerprint cards received

under s. 943.051 against the fingerprints retained in the statewide automated fingerprint identification system under paragraph (b). Any arrest record that is identified with the fingerprints of a person described in this paragraph must be reported as soon as possible to the clerk of the court. The clerk of the court must forward any arrest record received for a professional guardian to the Statewide Public Guardianship Office within 5 days. Each guardian who elects to undergo an inkless electronic background investigation shall participate in this search process by paying an annual fee to the clerk of the court and by informing the clerk of the court of any change in the status of his or her guardianship appointment. The amount of the annual fee to be imposed upon each clerk of the court for performing these searches and the procedures for the retention of guardian fingerprints and the dissemination of search results shall be established by rule of the Department of Law Enforcement. The fee may be borne by the clerk of the court or the guardian, but may not exceed $10.

(4)(a) A professional guardian, and each employee of a professional guardian who has a fiduciary responsibility to a ward, must complete, at his or her own expense, an investigation of his or her credit history before and at least once every 2 years after the date of the guardian's appointment.

(b) The Statewide Public Guardianship Office shall adopt a rule detailing the acceptable methods for completing a credit investigation under this section. If appropriate, the Statewide Public Guardianship Office may administer credit investigations. If the office chooses to administer the credit investigation,

the office may adopt a rule setting a fee, not to exceed $25, to reimburse the costs associated with the administration of a credit investigation.

(5) The Statewide Public Guardianship Office may inspect at any time the results of any credit or criminal investigation of a public or professional guardian conducted under this section. The office shall maintain copies of the credit or criminal results in the guardian's registration file. If the results of a credit or criminal investigation of a public or professional guardian have not been forwarded to the Statewide Public Guardianship Office by the investigating agency, the clerk of the court shall forward copies of the results of the investigations to the office upon receiving them. ~~If credit or criminal investigations are required, the court must consider the results of the investigations before appointing a guardian. Professional guardians and all employees of a professional guardian who have a fiduciary responsibility to a ward, so appointed, must resubmit, at their own expense, to an investigation of credit history, and undergo level 1 background screening as required under s. 435.03, at least every 2 years after the date of their appointment. At any time, the court may require guardians or their employees to submit to an investigation of credit history and undergo level 1 background screening as required under s. 435.03. The court must consider the results of these investigations in reappointing a guardian.~~

~~(1) Upon receiving the results of a credit or criminal investigation of any public or professional guardian, the clerk of the court shall forward copies of the results to the~~

~~Statewide Public Guardianship Office in order that the results may be maintained in the guardian's registration file.~~

(6) ~~(2)~~ The requirements of this section do ~~does~~ not apply to a professional guardian, or to the employees of a professional guardian, that ~~which~~ is a trust company, a state banking corporation or state savings association authorized and qualified to exercise fiduciary powers in this state, or a national banking association or federal savings and loan association authorized and qualified to exercise fiduciary powers in this state.

Section 9. Subsection (4) of section 744.3145, Florida Statutes, is amended to read:

744.3145 Guardian education requirements.--

(4) Each person appointed by the court to be a guardian must complete the required number of hours of instruction and education within 4 months ~~1 year~~ after his or her appointment as guardian. The instruction and education must be completed through a course approved by the chief judge of the circuit court and taught by a court-approved organization. Court-approved organizations may include, but are not limited to, community or junior colleges, guardianship organizations, and the local bar association or The Florida Bar.

Section 10. Paragraph (i) of subsection (1) and subsection (2) of section 744.3215, Florida Statutes, are amended to read:

744.3215 Rights of persons determined incapacitated.--

(1) A person who has been determined to be incapacitated retains the right:

(i) To receive ~~necessary~~ services and rehabilitation necessary to maximize the quality of life.

(2) Rights that may be removed from a person by an order determining incapacity but not delegated to a guardian include the right:

(a) To marry. If the right to enter into a contract has been removed, the right to marry is subject to court approval.

(b) To vote.

(c) To personally apply for government benefits.

(d) To have a driver's license.

(e) To travel.

(f) To seek or retain employment.

Section 11. Subsections (2), (3), and (7) of section 744.331, Florida Statutes, are amended to read:

744.331 Procedures to determine incapacity.--

(2) ATTORNEY FOR THE ALLEGED INCAPACITATED PERSON.--

(a) When a court appoints an attorney for an alleged incapacitated person, the court must appoint an attorney who is included in the attorney registry compiled by the circuit's Article V indigent services committee. Appointments must be made on a rotating basis, taking into consideration conflicts arising under this chapter.

(b) ~~(a)~~ The court shall appoint an attorney for each person alleged to be incapacitated in all cases involving a petition for adjudication of incapacity. The alleged incapacitated person may substitute her or his own attorney for the attorney appointed by the court, subject to court approval.

(c) ~~(b)~~ Any attorney representing an alleged incapacitated person may not serve as guardian of the alleged incapacitated person or as counsel for the guardian of the alleged incapacitated person or the petitioner.

(d) Effective January 1, 2007, an attorney seeking to be appointed by a court for incapacity and guardianship proceedings must have completed a minimum of 8 hours of education in guardianship. A court may waive the initial training requirement for an attorney who has served as a court-appointed attorney in incapacity proceedings or as an attorney of record for guardians for not less than 3 years.

(3) EXAMINING COMMITTEE.--

(a) Within 5 days after a petition for determination of incapacity has been filed, the court shall appoint an examining committee consisting of three members. One member must be a psychiatrist or other physician. The remaining members must be either a psychologist, gerontologist, another psychiatrist, or other physician, a registered nurse, nurse practitioner, licensed social worker, a person with an advanced degree in gerontology from an accredited institution of higher education, or other person who by knowledge, skill, experience, training, or education may, in the court's discretion, advise the court in the form of an expert opinion, including a professional guardian. One of three members of the committee must have knowledge of the type of incapacity alleged in the petition. Unless good cause is shown, the attending or family physician may not be appointed to the committee. If the attending or family physician is available for consultation, the committee

must consult with the physician. Members of the examining committee may not be related to or associated with one another, ~~or~~ with the petitioner, with counsel for the petitioner or the proposed guardian, or with the person alleged to be totally or partially incapacitated. A member may not be employed by any private or governmental agency that has custody of, or furnishes, services or subsidies, directly or indirectly, to the person or the family of the person alleged to be incapacitated or for whom a guardianship is sought. A petitioner may not serve as a member of the examining committee. Members of the examining committee must be able to communicate, either directly or through an interpreter, in the language that the alleged incapacitated person speaks or to communicate in a medium understandable to the alleged incapacitated person if she or he is able to communicate. The clerk of the court shall send notice of the appointment to each person appointed no later than 3 days after the court's appointment.

(b) A person who has been appointed to serve as a member of an examining committee to examine an alleged incapacitated person may not thereafter be appointed as a guardian for the person who was the subject of the examination.

(c) Each person appointed to an examining committee must file an affidavit with the court stating that he or she has completed the required courses or will do so no later than 4 months after his or her initial appointment. Each year, the chief judge of the circuit must prepare a list of persons qualified to be members of the examining committee.

(d) A member of an examining committee must complete a minimum of 4 hours of initial training. The person must complete 2 hours of continuing education during each 2-year period after the initial training. The initial training and continuing education program must be developed under the supervision of the Statewide Public Guardianship Office, in consultation with the Florida Conference of Circuit Court Judges; the Elder Law and the Real Property, Probate and Trust Law sections of The Florida Bar; the Florida State Guardianship Association; and the Florida Guardianship Foundation. The court may waive the initial training requirement for a person who has served for not less than 5 years on examining committees. If a person wishes to obtain his or her continuing education on the Internet or by watching a video course, the person must first obtain the approval of the chief judge before taking an Internet or video course.

(e) ~~(b)~~ Each member of the examining committee shall examine the person. Each ~~The~~ examining committee member must ~~shall~~ determine the alleged incapacitated person's ability to exercise those rights specified in s. 744.3215. In addition to the examination, each ~~the~~ examining committee member must ~~shall~~ have access to, and may consider, previous examinations of the person, including, but not limited to, habilitation plans, school records, and psychological and psychosocial reports voluntarily offered for use by the alleged incapacitated person. Each member of the examining committee must ~~shall~~ submit a report within 15 days after appointment.

(f) ~~(e)~~ The examination of the alleged incapacitated person must include a comprehensive examination, a report of which shall be filed by the examining committee as part of its written report. The comprehensive examination report should be an essential element, but not necessarily the only element, used in making a capacity and guardianship decision. The comprehensive examination must include, if indicated:

1. A physical examination;

2. A mental health examination; and

3. A functional assessment.

If any of these three aspects of the examination is not indicated or cannot be accomplished for any reason, the written report must explain the reasons for its omission.

(g) ~~(d)~~ The committee's written report must include:

1. To the extent possible, a diagnosis, prognosis, and recommended course of treatment.

2. An evaluation of the alleged incapacitated person's ability to retain her or his rights, including, without limitation, the rights to marry; vote; contract; manage or dispose of property; have a driver's license; determine her or his residence; consent to medical treatment; and make decisions affecting her or his social environment.

3. The results of the comprehensive examination and the committee members' assessment of information provided by the attending or family physician, if any.

4. A description of any matters with respect to which the person lacks the capacity to exercise rights, the extent of that

incapacity, and the factual basis for the determination that the person lacks that capacity.

5. The names of all persons present during the time the committee member conducted his or her examination. If a person other than the person who is the subject of the examination supplies answers posed to the alleged incapacitated person, the report must include the response and the name of the person supplying the answer.

6.~~5.~~ The signature of each member of the committee and the date and time that each member conducted his or her examination.

(h)~~(e)~~ A copy of the report must be served on the petitioner and on the attorney for the alleged incapacitated person within 3 days after the report is filed and at least 5 days before the hearing on the petition.

(7) FEES.--

(a) The examining committee and any attorney appointed under subsection (2) are entitled to reasonable fees to be determined by the court.

(b) The fees awarded under paragraph (a) shall be paid by the guardian from the property of the ward or, if the ward is indigent, by the state. The state shall have a creditor's claim against the guardianship property for any amounts paid under this section. The state may file its claim within 90 days after the entry of an order awarding attorney ad litem fees. If the state does not file its claim within the 90-day period, the state is thereafter barred from asserting the claim. Upon petition by the state for payment of the claim, the court shall

enter an order authorizing immediate payment out of the property of the ward. The state shall keep a record of the ~~such~~ payments.

(c) If the petition is dismissed, costs and attorney's fees of the proceeding may be assessed against the petitioner if the court finds the petition to have been filed in bad faith.

Section 12. Subsection (4) of section 744.341, Florida Statutes, is renumbered as subsection (5) and a new subsection (4) is added to that section to read:

744.341 Voluntary guardianship.--

(4) A guardian must include in the annual report filed with the court a certificate from a licensed physician who examined the ward not more than 90 days before the annual report is filed with the court. The certificate must certify that the ward is competent to understand the nature of the guardianship and of the ward's authority to delegate powers to the voluntary guardian.

Section 13. Subsection (9) is added to section 744.361, Florida Statutes, to read:

744.361 Powers and duties of guardian.--

(9) A professional guardian must ensure that each of the guardian's wards is personally visited by the guardian or one of the guardian's professional staff at least once each calendar quarter. During the personal visit, the guardian or the guardian's professional staff person shall assess:

(a) The ward's physical appearance and condition.

(b) The appropriateness of the ward's current living situation.

(c) The need for any additional services and the necessity for continuation of existing services, taking into consideration all aspects of social, psychological, educational, direct service, health, and personal care needs.

This subsection does not apply to a professional guardian who has been appointed only as guardian of the property.

Section 14. Subsection (2) of section 744.365, Florida Statutes, is amended to read:

744.365 Verified inventory.--

(2) CONTENTS.--The verified inventory must include the following:

(a) All property of the ward, real and personal, that has come into the guardian's possession or knowledge, including a statement of all encumbrances, liens, and other secured claims on any item, any claims against the property, ~~and~~ any cause of action accruing to the ward, and any trusts of which the ward is a beneficiary.~~;~~

(b) The location of the real and personal property in sufficient detail so that it may be clearly identified or located.~~; and~~

(c) A description of all sources of income, including, without limitation, social security benefits and pensions.

Section 15. Subsections (1) and (3) of section 744.367, Florida Statutes, are amended to read:

744.367 Duty to file annual guardianship report.--

(1) Unless the court requires filing on a calendar-year basis, each guardian of the person shall file with the court an

annual guardianship plan within 90 days after the last day of the anniversary month the letters of guardianship were signed, and the plan must cover the coming fiscal year, ending on the last day in such anniversary month. If the court requires calendar-year filing, the guardianship plan must be filed on or before April 1 of each year ~~within 90 days after the end of the calendar year~~.

(3) The annual guardianship report of a guardian of the property must consist of an annual accounting, and the annual report of a guardian of the person ~~of an incapacitated person~~ must consist of an annual guardianship plan. The annual report shall be served on the ward, unless the ward is a minor ~~under the age of 14 years~~ or is totally incapacitated, and on the attorney for the ward, if any. The guardian shall provide a copy to any other person as the court may direct.

Section 16. Section 744.3675, Florida Statutes, is amended to read:

744.3675 Annual guardianship plan.--Each guardian of the person must file with the court an annual guardianship plan which updates information about the condition of the ward. The annual plan must specify the current needs of the ward and how those needs are proposed to be met in the coming year.

(1) Each plan for an adult ward must, if applicable, include:

(a) Information concerning the residence of the ward, including:

1. The ward's address at the time of filing the plan.~~;~~

2. The name and address of each place where the ward was maintained during the preceding year.~~;~~

3. The length of stay of the ward at each place.~~;~~

4. A statement of whether the current residential setting is best suited for the current needs of the ward.~~; and~~

5. Plans for ensuring during the coming year that the ward is in the best residential setting to meet his or her needs.

(b) Information concerning the medical and mental health conditions ~~condition~~ and treatment and rehabilitation needs of the ward, including:

1. A resume of any professional medical treatment given to the ward during the preceding year.~~;~~

2. The report of a physician who examined the ward no more than 90 days before the beginning of the applicable reporting period. The ~~Such~~ report must contain an evaluation of the ward's condition and a statement of the current level of capacity of the ward.~~; and~~

3. The plan for providing ~~provision of~~ medical, mental health, and rehabilitative services in the coming year.

(c) Information concerning the social condition of the ward, including:

1. The social and personal services currently used ~~utilized~~ by the ward.~~;~~

2. The social skills of the ward, including a statement of how well the ward communicates and maintains interpersonal relationships. ~~with others;~~

~~3. A description of the ward's activities at communication and visitation; and~~

3.~~4.~~ The social needs of the ward.

(2) Each plan filed by the legal guardian of a minor must include:

(a) Information concerning the residence of the minor, including:

1. The minor's address at the time of filing the plan.

2. The name and address of each place the minor lived during the preceding year.

(b) Information concerning the medical and mental health conditions and treatment and rehabilitation needs of the minor, including:

1. A resume of any professional medical treatment given to the minor during the preceding year.

2. A report from the physician who examined the minor no more than 180 days before the beginning of the applicable reporting period that contains an evaluation of the minor's physical and mental conditions.

3. The plan for providing medical services in the coming year.

(c) Information concerning the education of the minor, including:

1. A summary of the school progress report.

2. The social development of the minor, including a statement of how well the minor communicates and maintains interpersonal relationships.

3. The social needs of the minor.

(3) ~~(2)~~ Each plan for an adult ward must address the issue of restoration of rights to the ward and include:

(a) A summary of activities during the preceding year that ~~which~~ were designed to enhance ~~increase~~ the capacity of the ward.~~;~~

(b) A statement of whether the ward can have any rights restored.~~; and~~

(c) A statement of whether restoration of any rights will be sought.

(4) ~~(3)~~ The court, in its discretion, may require reexamination of the ward by a physician at any time.

Section 17. Subsections (2) and (3) of section 744.3678, Florida Statutes, are amended to read:

744.3678 Annual accounting.--

(2) The annual accounting must include:

(a) A full and correct account of the receipts and disbursements of all of the ward's property over which the guardian has control and a statement of the ward's property on hand at the end of the accounting period. This paragraph does not apply to any property or any trust of which the ward is a beneficiary but which is not under the control or administration of the guardian.

(b) A copy of the annual or year-end statement of all of the ward's cash accounts from each of the institutions where the cash is deposited.

(3) The guardian must obtain a receipt, ~~or~~ canceled check, or other proof of payment for all expenditures and disbursements made on behalf of the ward. The guardian must preserve all evidence of payment ~~the receipts and canceled checks~~, along with other substantiating papers, for a period of 3 years after his

or her discharge. The receipts, proofs of payment ~~checks~~, and substantiating papers need not be filed with the court but shall be made available for inspection and review at the ~~such~~ time and ~~in such~~ place and before the ~~such~~ persons as the court may ~~from time to time~~ order.

Section 18. Section 744.3679, Florida Statutes, is amended to read:

744.3679 Simplified accounting procedures in certain cases.--

(1) In a guardianship of property, when all assets of the estate are in designated depositories under s. 69.031 and the only transactions that occur in that account are interest accrual, deposits from a ~~pursuant to~~ settlement, or financial institution service charges, the guardian may elect to file an accounting consisting of:

(a) The original or a certified copy of the year-end statement of the ward's account from the financial institution; and

(b) A statement by the guardian under penalty of perjury that the guardian has custody and control of the ward's property as shown in the year-end statement.

~~(2) The clerk has no responsibility to monitor or audit the accounts and may not accept a fee for doing so.~~

(2)~~(3)~~ The accounting allowed by subsection (1) is in lieu of the accounting and auditing procedures under s. 744.3678(2) ~~ss. 744.3678 and 744.368(1)(f)~~. However, any interested party may seek judicial review as provided in s. 744.3685.

(3) ~~(4)~~ The guardian need not be represented by an attorney in order to file the annual accounting allowed by subsection (1).

Section 19. Subsection (3) of section 744.368, Florida Statutes, is amended to read:

744.368 Responsibilities of the clerk of the circuit court.--

(3) Within 90 days after the filing of the verified inventory and accountings ~~initial or annual guardianship report~~ by a guardian of the property, the clerk shall audit the verified inventory and ~~or~~ the accountings ~~annual accounting~~. The clerk shall advise the court of the results of the audit.

Section 20. Subsection (19) of section 744.441, Florida Statutes, is amended to read:

744.441 Powers of guardian upon court approval.--After obtaining approval of the court pursuant to a petition for authorization to act, a plenary guardian of the property, or a limited guardian of the property within the powers granted by the order appointing the guardian or an approved annual or amended guardianship report, may:

(19) Create or amend revocable or irrevocable trusts of property of the ward's estate which may extend beyond the disability or life of the ward in connection with estate, gift, income, or other tax planning or in connection with estate planning. The court shall retain oversight of the assets transferred to a trust, unless otherwise ordered by the court.

Section 21. Section 744.442, Florida Statutes, is created to read:

744.442 Delegation of authority.--

(1) A guardian may designate a surrogate guardian to exercise the powers of the guardian if the guardian is unavailable to act. A person designated as a surrogate guardian under this section must be a professional guardian.

(2)(a) A guardian must file a petition with the court requesting permission to designate a surrogate guardian.

(b) If the court approves the designation, the order must specify the name and business address of the surrogate guardian and the duration of appointment, which may not exceed 30 days. The court may extend the appointment for good cause shown. The surrogate guardian may exercise all powers of the guardian unless limited by order of the court. The surrogate guardian must file with the court an oath swearing or affirming that he or she will faithfully perform the duties delegated. The court may require the surrogate guardian to post a bond.

(3) This section does not limit the responsibility of the guardian to the ward and to the court. The guardian is liable for the acts of the surrogate guardian. The guardian may terminate the authority of the surrogate guardian by filing a written notice of the termination with the court.

(4) The surrogate guardian is subject to the jurisdiction of the court as if appointed to serve as guardian.

Section 22. Paragraphs (c), (e), and (f) of subsection (2) and subsection (4) of section 744.464, Florida Statutes, are amended to read:

744.464 Restoration to capacity.--

(2) SUGGESTION OF CAPACITY.--

(c) The court shall immediately send notice of the filing of the suggestion of capacity to the ward, the guardian, the attorney for the ward, if any, ~~the state attorney,~~ and any other interested persons designated by the court. Formal notice must be served on the guardian. Informal notice may be served on other persons. Notice need not be served on the person who filed the suggestion of capacity.

(e) If an objection is timely filed, or if the medical examination suggests that full restoration is not appropriate, the court shall set the matter for hearing. If the ward does not have an attorney, the court shall appoint one to represent the ward.

(f) Notice of the hearing and copies of the objections and medical examination reports shall be served upon the ward, the ward's attorney, the guardian, ~~the state attorney,~~ the ward's next of kin, and any other interested persons as directed by the court.

~~(4) TIME LIMITATION FOR FILING SUGGESTION OF CAPACITY.--Notwithstanding this section, a suggestion of capacity may not be filed within 90 days after an adjudication of incapacity or denial of restoration, unless good cause is shown.~~

Section 23. Paragraph (a) of subsection (19) of section 744.474, Florida Statutes, is amended, and paragraph (b) of that subsection is redesignated as subsection (20) of that section and amended, to read:

744.474 Reasons for removal of guardian.--A guardian may be removed for any of the following reasons, and the removal shall be in addition to any other penalties prescribed by law:

(19) Upon a showing by a person who did not receive notice of the petition for adjudication of incapacity, when such notice is required, or who is related to the ward within the relationships specified for nonresident relatives in ss. 744.309(2) and 744.312(2) and who has not previously been rejected by the court as a guardian that~~:~~

~~(a)~~ the current guardian is not a family member~~;~~ and subsection (20) applies.

(20) ~~(b)~~ Upon a showing that removal of the current guardian is in the best interest of the ward, the court may remove the current guardian and appoint the petitioner, or such person as the court deems in the best interest of the ward, either as guardian of the person or of the property, or both.

Section 24. Section 744.511, Florida Statutes, is amended to read:

744.511 Accounting upon removal.--A removed guardian shall file with the court a true, complete, and final report of his or her guardianship within 20 days after removal and shall serve a copy on the successor guardian and the ward, unless the ward is a minor ~~under 14 years of age~~ or has been determined to be totally incapacitated.

Section 25. Section 744.527, Florida Statutes, is amended to read:

744.527 Final reports and application for discharge; hearing.--

(1) When the court terminates the guardianship for any of the reasons set forth in s. 744.521, the guardian shall promptly file his or her final report. If the ward has died, the guardian must file a final report with the court no later than 45 days after he or she has been served with letters of administration or letters of curatorship. If no objections are filed and if it appears that the guardian has made full and complete distribution to the person entitled and has otherwise faithfully discharged his or her duties, the court shall approve the final report. If objections are filed, the court shall conduct a hearing in the same manner as provided for a hearing on objections to annual guardianship reports.

(2) The guardian applying for discharge may ~~is authorized to~~ retain from the funds in his or her possession a sufficient amount to pay the final costs of administration, including guardian and attorney's fees regardless of the death of the ward, accruing between the filing of his or her final returns and the order of discharge.

Section 26. Subsection (3) of section 744.528, Florida Statutes, is amended to read:

744.528 Discharge of guardian named as personal representative.--

(3) Any interested person may file a notice of ~~The court shall set~~ a hearing on any objections filed by the beneficiaries. Notice of the hearing must ~~shall~~ be served upon the guardian, beneficiaries of the ward's estate, and any other person to whom the court directs service. If a notice of hearing

on the objections is not served within 90 days after filing of the objections, the objections are deemed abandoned.

Section 27. Subsections (5) through (8) of section 744.708, Florida Statutes, are amended to read:

744.708 Reports and standards.--

(5)(a) Each office of public guardian shall undergo an independent audit by a qualified certified public accountant ~~shall be performed~~ at least once every 2 years. ~~The audit should include an investigation into the practices of the office for managing the person and property of the wards.~~ A copy of the audit report shall be submitted to the Statewide Public Guardianship Office.

(b) In addition to regular monitoring activities, the Statewide Public Guardianship Office shall conduct an investigation into the practices of each office of public guardian related to the managing of each ward's personal affairs and property. When feasible, the investigation required under this paragraph shall be conducted in conjunction with the financial audit of each office of public guardian under paragraph (a).

(c) In addition, each ~~the~~ office of public guardian shall be subject to audits or examinations by the Auditor General and the Office of Program Policy Analysis and Government Accountability pursuant to law.

(6) A ~~The~~ public guardian shall ensure that each of the guardian's wards is personally visited ~~ward is seen~~ by the public guardian or by one of the guardian's ~~a~~ professional staff ~~person~~ at least once each calendar quarter ~~four times a year~~.

During this personal visit, the public guardian or the professional staff person shall assess:

(a) The ward's physical appearance and condition.

(b) The appropriateness of the ward's current living situation.

(c) The need for any additional services and the necessity for continuation of existing services, taking into consideration all aspects of social, psychological, educational, direct service, health, and personal care needs.

(7) The ratio for professional staff to wards shall be 1 professional to 40 wards. The Statewide Public Guardianship Office may increase or decrease the ratio after consultation with the local public guardian and the chief judge of the circuit court. The basis of the decision to increase or decrease the prescribed ratio shall be reported in the annual report to the Secretary of Elderly Affairs, the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Chief Justice of the Supreme Court.

~~(8) The term "professional," for purposes of this part, shall not include the public guardian nor the executive director of the Statewide Public Guardianship Office. The term "professional" shall be limited to those persons who exercise direct supervision of individual wards under the direction of the public guardian.~~

Section 28. Paragraph (a) of subsection (5) of section 765.101, Florida Statutes, is amended to read:

765.101 Definitions.--As used in this chapter:

(5) "Health care decision" means:

(a) Informed consent, refusal of consent, or withdrawal of consent to any and all health care, including life-prolonging procedures and mental health treatment, unless otherwise stated in the advance directives.

Section 29. Section 28.345, Florida Statutes, is amended to read:

28.345 Exemption from court-related fees and charges.--Notwithstanding any other ~~provision of this chapter or~~ law to the contrary, judges and those court staff acting on behalf of judges, state attorneys, guardians ad litem, public guardians, attorneys ad litem, court-appointed private counsel, and public defenders, acting in their official capacity, and state agencies~~,~~ are exempt from all court-related fees and charges assessed by the clerks of the circuit courts.

Section 30. Paragraph (c) of subsection (8) of section 121.091, Florida Statutes, is amended to read:

121.091 Benefits payable under the system.--Benefits may not be paid under this section unless the member has terminated employment as provided in s. 121.021(39)(a) or begun participation in the Deferred Retirement Option Program as provided in subsection (13), and a proper application has been filed in the manner prescribed by the department. The department may cancel an application for retirement benefits when the member or beneficiary fails to timely provide the information and documents required by this chapter and the department's rules. The department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation

of such application when the required information or documents are not received.

(8) DESIGNATION OF BENEFICIARIES.--

(c) Notwithstanding the member's designation of benefits to be paid through a trust to a beneficiary that is a natural person as provided in s. 121.021(46), and notwithstanding the provisions of the trust, benefits shall be paid directly to the beneficiary if the ~~such~~ person is no longer a minor or an incapacitated person as defined in s. 744.102~~(11) and (12)~~.

Section 31. Paragraph (c) of subsection (20) of section 121.4501, Florida Statutes, is amended to read:

121.4501 Public Employee Optional Retirement Program.--

(20) DESIGNATION OF BENEFICIARIES.--

(c) Notwithstanding the participant's designation of benefits to be paid through a trust to a beneficiary that is a natural person, and notwithstanding the provisions of the trust, benefits shall be paid directly to the beneficiary if the ~~such~~ person is no longer a minor or an incapacitated person as defined in s. 744.102~~(11) and (12)~~.

Section 32. Subsection (1) and paragraphs (b), (d), and (f) of subsection (4) of section 709.08, Florida Statutes, are amended to read:

709.08 Durable power of attorney.--

(1) CREATION OF DURABLE POWER OF ATTORNEY.--A durable power of attorney is a written power of attorney by which a principal designates another as the principal's attorney in fact. The durable power of attorney must be in writing, must be executed with the same formalities required for the conveyance

of real property by Florida law, and must contain the words: "This durable power of attorney is not affected by subsequent incapacity of the principal except as provided in s. 709.08, Florida Statutes"; or similar words that show the principal's intent that the authority conferred is exercisable notwithstanding the principal's subsequent incapacity, except as otherwise provided by this section. The durable power of attorney is exercisable as of the date of execution; however, if the durable power of attorney is conditioned upon the principal's lack of capacity to manage property as defined in s. 744.102(12)~~(11)~~(a), the durable power of attorney is exercisable upon the delivery of affidavits in paragraphs (4)(c) and (d) to the third party.

(4) PROTECTION WITHOUT NOTICE; GOOD FAITH ACTS; AFFIDAVITS.--

(b) Any third party may rely upon the authority granted in a durable power of attorney that is conditioned on the principal's lack of capacity to manage property as defined in s. 744.102(12)~~(11)~~(a) only after receiving the affidavits provided in paragraphs (c) and (d), and such reliance shall end when the third party has received notice as provided in subsection (5).

(d) A determination that a principal lacks the capacity to manage property as defined in s. 744.102(12)~~(11)~~(a) must be made and evidenced by the affidavit of a physician licensed to practice medicine pursuant to chapters 458 and 459 as of the date of the affidavit. A judicial determination that the principal lacks the capacity to manage property pursuant to chapter 744 is not required prior to the determination by the

physician and the execution of the affidavit. For purposes of this section, the physician executing the affidavit must be the primary physician who has responsibility for the treatment and care of the principal. The affidavit executed by a physician must state where the physician is licensed to practice medicine, that the physician is the primary physician who has responsibility for the treatment and care of the principal, and that the physician believes that the principal lacks the capacity to manage property as defined in s. 744.102(12) ~~(11)~~(a). The affidavit may, but need not, be in the following form:

STATE OF_____

COUNTY OF_____

Before me, the undersigned authority, personally appeared (name of physician) , Affiant, who swore or affirmed that:

1. Affiant is a physician licensed to practice medicine in (name of state, territory, or foreign country) .

2. Affiant is the primary physician who has responsibility for the treatment and care of (principal's name) .

3. To the best of Affiant's knowledge after reasonable inquiry, Affiant believes that the principal lacks the capacity to manage property, including taking those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income.

_____

(Affiant)

Sworn to (or affirmed) and subscribed before me this (day of) (month), (year), by (name of person making statement)

(Signature of Notary Public-State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known OR Produced Identification

(Type of Identification Produced)

(f) A third party may not rely on the authority granted in a durable power of attorney conditioned on the principal's lack of capacity to manage property as defined in s. 744.102(12) ~~(11)~~(a) when any affidavit presented has been executed more than 6 months prior to the first presentation of the durable power of attorney to the third party.

Section 33. Subsection (3) of section 744.1085, Florida Statutes, is amended to read:

744.1085 Regulation of professional guardians; application; bond required; educational requirements.--

(3) Each professional guardian defined in s. 744.102(17) ~~(16)~~ and public guardian must receive a minimum of 40 hours of instruction and training. Each professional guardian must receive a minimum of 16 hours of continuing education every 2 calendar years after the year in which the initial 40-hour educational requirement is met. The instruction and education

must be completed through a course approved or offered by the Statewide Public Guardianship Office. The expenses incurred to satisfy the educational requirements prescribed in this section may not be paid with the assets of any ward. This subsection does not apply to any attorney who is licensed to practice law in this state.

Section 34. For the purpose of incorporating the amendment made by this act to section 744.3215, Florida Statutes, in a reference thereto, subsection (4) of section 117.107, Florida Statutes, is reenacted to read:

117.107 Prohibited acts.--

(4) A notary public may not take the acknowledgment of or administer an oath to a person whom the notary public actually knows to have been adjudicated mentally incapacitated by a court of competent jurisdiction, where the acknowledgment or oath necessitates the exercise of a right that has been removed pursuant to s. 744.3215(2) or (3), and where the person has not been restored to capacity as a matter of record.

Section 35. Subsection (13) of section 318.18, Florida Statutes, is amended to read:

318.18 Amount of civil penalties.--The penalties required for a noncriminal disposition pursuant to s. 318.14 are as follows:

(13) In addition to any penalties imposed for noncriminal traffic infractions under ~~pursuant to~~ this chapter or imposed for criminal violations listed in s. 318.17, notwithstanding s. 318.121, a board of county commissioners or any unit of local government which is consolidated as provided by s. 9, Art. VIII

of the State Constitution of 1885, as preserved by s. 6(e), Art. VIII of the Constitution of 1968:

(a) May impose by ordinance a surcharge of up to $15 for any infraction or violation to fund state court facilities. The court may ~~shall~~ not waive this surcharge. Up to 25 percent of the revenue from such surcharge may be used to support local law libraries provided that the county or unit of local government provides a level of service equal to that provided prior to July 1, 2004, which shall include the continuation of library facilities located in or near the county courthouse or annexes.

(b) That imposed increased fees or service charges by ordinance under s. 28.2401, s. 28.241, or s. 34.041 for the purpose of securing payment of the principal and interest on bonds issued by the county before July 1, 2003, to finance state court facilities, may impose by ordinance a surcharge for any infraction or violation for the exclusive purpose of securing payment of the principal and interest on bonds issued by the county before July 1, 2003, to fund state court facilities until the date of stated maturity. The court may ~~shall~~ not waive this surcharge. The ~~Such~~ surcharge may not exceed an amount per violation calculated as the quotient of the maximum annual payment of the principal and interest on the bonds as of July 1, 2003, divided by the number of traffic citations for county fiscal year 2002-2003 certified as paid by the clerk of the court of the county. The ~~Such~~ quotient shall be rounded up to the next highest dollar amount. The bonds may be refunded only if savings will be realized on payments of debt service and the

refunding bonds are scheduled to mature on the same date or before the bonds being refunded.

(c) May impose an additional $15 surcharge to fund the county's participation in the public guardianship program under chapter 744. Imposition of this surcharge must be by vote of two-thirds of the board of county commissioners or after a referendum approved by the electors of the county. Before imposing the surcharge, the county commission must demonstrate that available revenue sources are insufficient to fund such participation. The court may not waive this surcharge.

A county may not impose ~~both of~~ the surcharges authorized under both paragraphs (a) and (b) concurrently. The clerk of court shall report, no later than 30 days after the end of the quarter, the amount of funds collected under this subsection during each quarter of the fiscal year. The clerk shall submit the report, in a format developed by the Office of State Courts Administrator, to the chief judge of the circuit, the Governor, the President of the Senate, and the Speaker of the House of Representatives.

Section 36. Section 938.065, Florida Statutes, is created to read:

938.065 Additional cost for public guardianship programs.--

(1) In addition to any fine prescribed by law for any misdemeanor offense, there is assessed as a court cost an additional surcharge of $18 on each fine, which shall be imposed

by each county and circuit court and collected by the clerk of the court together with the fine.

(2) The clerk of the court shall collect and forward, on a monthly basis, all costs assessed under this section, less $3 per assessment as a service charge to be retained by the clerk, to the Department of Revenue for deposit into the General Revenue Fund. The funds collected shall be used exclusively to fund public guardianship programs in this state.

Section 37. This act shall take effect July 1, 2006.

HB 459

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 459 Public Records
SPONSOR(S): Sands
TIED BILLS: HB 457 **IDEN./SIM. BILLS:** SB 474

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Future of Florida's Families Committee	4 Y, 2 N	Preston	Collins
2) Civil Justice Committee		Shaddock	Bond
3) Governmental Operations Committee			
4) Health & Families Council			
5)			

SUMMARY ANALYSIS

The bill creates a public records exemption for identifying information of persons making a donation to the direct-support organization of the Statewide Public Guardianship Office. This anonymity must also be maintained in any publication concerning the direct-support organization.

This bill provides for future review and repeal of the exemption on October 2, 2010, and provides a statement of public necessity.

The bill could have a minimal fiscal impact on state and local governments.

The bill requires a two-thirds vote of the members present and voting for passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill decreases access to public records.

B. EFFECT OF PROPOSED CHANGES:

Public Records Law

Florida has a long history of providing public access to the records of governmental and other public entities. The Legislature enacted its first law affording access to public records in 1909. In 1992, Floridians adopted an amendment to the state constitution that raised the statutory right of access to public records to a constitutional level. Section (24)(a), Art. I of the State Constitution provides that:

> Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

The Public Records Law[1] also specifies conditions under which the public must have access to governmental records. Section 119.011(11), F.S., defines the term "public records" to include:

> all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition of public records to include all materials made or received by an agency in connection with official business which are used "to perpetuate, communicate, or formalize knowledge."[2] Unless the Legislature makes these materials exempt, they are open for public inspection, regardless of whether they are in final form.[3]

Under s. 24(c), Art. I of the State Constitution, the Legislature may provide for the exemption of records from the public records requirements provided: (1) the law creating the exemption states with specificity the public necessity justifying the exemption; and (2) the exemption is no broader than necessary to accomplish the stated purpose of the law.

The Open Government Sunset Review Act, s. 119.15, F.S., provides for the review, repeal, and reenactment of an exemption. A new exemption is repealed on the October 2nd in the fifth year after enactment, unless the exemption is reenacted by the Legislature. An exemption may be created or maintained only if it serves an identifiable public purpose, and it may be no broader than necessary to meet that purpose.

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[1] Chapter 119, F.S.
[2] *Shevin v. Byron, Harless, Schaffer, Reid, and Assocs., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).
[3] *See Wait v. Florida Power & Light Co.*, 372 So. 2d 420 (Fla. 1979).

Statewide Public Guardianship Office

The Statewide Public Guardianship Office ("SPGO") is housed within the Department of Elderly Affairs.[4] The purpose of the SPGO is to provide public guardians to incapacitated persons for whom there is no family member or friend, other person, bank, or corporation willing and qualified to serve as guardian.[5] The Legislature also authorized the creation of a direct-support organization to support the SPGO.[6] The purpose of the direct-support organization is:

> to conduct programs and activities; to raise funds; to request and receive grants, gifts, and bequests of moneys; to acquire, receive, hold, invest, and administer, in its own name, securities, funds, objects of value, or other property, real or personal; and to make expenditures to or for the direct or indirect benefit of the Statewide Public Guardianship Office. . . .[7]

The bill creates a public records exemption to allow donors and prospective donors to the direct-support organization for the Statewide Public Guardianship Office to remain anonymous, if they wish. The bill provides that the public records exemption is necessary because the release of information identifying donors will adversely affect the direct-support organization.

This bill takes effect July 1, 2006. The public records exemption will automatically repeal on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

C. SECTION DIRECTORY:

Section 1 amends s. 744.7082, F.S., to create a public records exemption for identifying information of persons making a donation to the direct-support organization of the Statewide Public Guardianship Office.

Section 2 provides for review and future repeal of the exemption on October 2, 2010.

Section 3 provides a statement of public necessity.

Section 4 provides for an effective date of July 1, 2006, if HB 457 becomes law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

[4] Section 744.7021, F.S.
[5] Section 744.702, F.S.
[6] Section 744.7082, F.S.
[7] Section 744.7082(1)(b), F.S.

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

D. FISCAL COMMENTS:

The public records law in general creates a significant, although unquantifiable, increase in government spending. Government employees must locate requested records, and must examine every requested record to determine if a public records exemption prohibits release of the record. There is likely no marginal fiscal impact to a single public records exemption; the location and examination process remains whether or not a particular public records exemption exists.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, the bill requires a two-thirds vote for passage.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

A bill to be entitled

An act relating to public records; amending s. 744.7082, F.S.; creating an exemption from public records requirements for identifying information of persons making a donation of funds or property to the direct-support organization of the Statewide Public Guardianship Office; providing for review and repeal under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsections (6) and (7) of section 744.7082, Florida Statutes, are renumbered as subsections (7) and (8), respectively, and a new subsection (6) is added to that section to read:

744.7082 Direct-support organization; definition; use of property; board of directors; audit; dissolution.--

(6) PUBLIC RECORDS.--The identity of a donor or prospective donor of funds or property to the direct-support organization who desires to remain anonymous, and all information identifying the donor or prospective donor, is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, and that anonymity must be maintained in any publication concerning the direct-support organization.

Section 2. Subsection (6) of s. 744.7082, Florida Statutes, is subject to the Open Government Sunset Review Act in

accordance with s. 119.15, Florida Statutes, and shall stand repealed on October 2, 2010, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 3. The Legislature finds that it is a public necessity that the name and other identifying information of a donor or prospective donor to the direct-support organization of the Statewide Public Guardianship Office be held confidential and exempt from public disclosure because the disclosure of this information would adversely impact the efforts of the direct-support organization to collect funding or gifts of property to support the statewide office. The sole purpose of the direct-support organization is to raise funds for the statewide office, and donor contributions are a key element in the ability of the organization to achieve its goals. Some individuals who desire to donate to the direct-support organization wish to remain anonymous. The direct-support organization would be adversely affected if identifying information of a donor is released to the public. Therefore, the Legislature finds that any benefit derived from public disclosure of identifying information of a donor is outweighed by the necessity to keep the information confidential.

Section 4. This act shall take effect July 1, 2006, if House Bill 457, or similar legislation revising provisions relating to the Statewide Public Guardianship Office, is adopted in the same legislative session or an extension thereof and becomes law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 817 CS Telecommunications Carriers of Last Resort
SPONSOR(S): Murzin
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Utilities & Telecommunications Committee	16 Y, 0 N, w/CS	Cater	Holt
2) Business Regulation Committee	14 Y, 0 N	Watson	Liepshutz
3) Civil Justice Committee		Blalock	Bond
4) Commerce Council			
5)			

SUMMARY ANALYSIS

Current law provides that, "until January 1, 2009, each local exchange telecommunications company shall be required to furnish basic local exchange telecommunications service within a reasonable time period to any person requesting such service within the company's territory." This provision is generally referred to as the "carrier-of-last-resort" obligation under which local exchange telecommunications companies have always operated. PSC rules provide availability of service requirements such as having facilities in place for "realistically anticipated customer demands for basic local telecommunications service" and timeframes for service requests to be fulfilled.

This bill amends s. 364.025, F.S., to provide that a local exchange telecommunications company (LEC), with carrier-of-last resort (COLR) obligations, is relieved of providing basic local telecommunications service to business or residential buildings or developments, when circumstances exist that prevented or impeded it from connecting with the occupants.

This bill requires a LEC, with COLR obligations, to give timely notice to the PSC when circumstances exist that prevent or impede it from providing basic local exchange telecommunications service (basic service) to the occupants of building or development. If its COLR obligation is not automatically relieved, a LEC can petition the PSC for a waiver of this obligation based on the facts and circumstances of the provision of service on the party.

This bill also requires the COLR obligation to go back into effect if the circumstances for automatic relief no longer exist and the owner or developer of the property has no intention to arrange for communication service for another provider. The bill allows the LEC to recover from the developer, reasonable costs in excess of the LECs costs if it had initially provided service.

The bill does not have a fiscal impact on state or local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government -- This bill provides an exemption to a local exchange telecommunications company with carrier-of-last resort (COLR) obligations, when circumstances exist that prevented or impeded it from providing basic service to the occupants of a business or residential multi-tenant building or development.

B. EFFECT OF PROPOSED CHANGES:

Background

Section 364.025(1), F.S., provides that, "[U]ntil January 1, 2009, each local exchange telecommunications company shall be required to furnish basic local exchange telecommunications service[1] within a reasonable time period to any person requesting such service within the company's territory." This provision is generally referred to as the "carrier-of-last-resort" obligation under which local exchange telecommunications companies[2] have always operated. PSC rules provide availability of service requirements such as having facilities in place for "realistically anticipated customer demands for basic local telecommunications service" and timeframes for service requests to be fulfilled.[3]

The current law does not provide for waiver of the COLR obligations. However, s. 364.01(4)(f), F.S., provides the PSC with authority to eliminate rules and regulations that delay or impair the transition to competition.

Local exchange telecommunications companies with COLR obligations have encountered situations in multi-tenant structures and developments that have prevented or impeded them from providing basic service to the occupants (end-use customers). Either before or after a LEC begins provisioning activities to serve these end-use customers, the property owner either enters into an exclusive arrangement with another carrier and prohibits the COLR from installing facilities and/or providing service, or the property owner enters into an agreement with another communications provider where the property owner collects money from the tenants to cover the cost of the alternative communications services. However, the LEC still has its COLR obligation; and when these situations have occurred, the LEC has notified the PSC of these "locked out" situations.

On December 16, 2005, BellSouth Telecommunications, Inc., a COLR, petitioned the PSC for Waiver of Rules 25-4.066 and 25-4.067, F.A.C. and Petition to Initiate Rulemaking (Petition). BellSouth seeks relief relate to service installation intervals and line extension cost recovery which have been established, in part, to implement its COLR obligation. BellSouth's rulemaking request is to permit a waiver of the rules relating only to multi-tenant establishments and subdivisions where owners or developers have sought to limit the ability of COLRs to serve the occupants of such locations. The PSC has not ruled on the Petition.

Effect of Bill

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[1] Section 364.02(1), F.S., defines "basic local telecommunications service" as voice-grade, flat-rate residential, and flat-rate single-line business local exchange services which provide dial tone, local usage necessary to place unlimited calls within a local exchange area, dual tone multifrequency dialing, and access to the following: emergency services such as "911," all locally available interexchange companies, directory assistance, operator services, relay services, and an alphabetical directory listing. For a local exchange telecommunications company, the term shall include any extended area service routes, and extended calling service in existence or ordered by the commission on or before July 1, 1995.

[2] Section 364.02(8), F.S., defines "local exchange telecommunications company" as any company certificated by the commission to provide local exchange telecommunications service in this state on or before June 30, 1995.

[3] S. 25-4.066, F.A.C., Availability of Service.

This bill amends s. 364.025, F.S., to provide an exemption to local exchange telecommunications companies, with carrier-of-last resort (COLR) obligations. The exemption relieves them of providing basic service only to business or residential buildings or developments, when circumstances exist that prevented or impeded them from connecting with the occupants. The bill provides definitions and establishes criteria under which the exemption is applicable.

The bill defines the following terms:

- "Owner or developer" as the owner or developer of a multi-tenant business or residential property, any condominium association or homeowners' association thereof, or any other person or entity having ownership in or control over the property.
- "Communications service provider" includes any person or entity providing communications services or allowing another person or entity to use its communications facilities to provide communications services, or any person or entity securing rights to select communications service providers for a property owner or developer.
- "Communications service" means voice service or voice replacement service.

This bill establishes criteria whereby a LEC, with COLR obligations, may be relieved of its obligations to provide basic service to any customers in a multi-tenant business or residential property (including, but not limited to, apartments, condominiums, subdivisions, office buildings or office parks), when the owner or developer:

- Permits only one communications service provider, not the LEC, to install its communications service-related facilities or equipment during the construction phase of the project;
- Accepts or agrees to accept incentives or rewards from a communications service provider that are contingent upon the provision of any or all communications services by one or more communications service providers to the exclusion of the LEC;
- Collects from the occupants or residents of the property charges for the provision of any communications service, provided by a communications service provider other than the LEC, in any manner, including, but not limited to, collection through rent, fees, or dues;
- Restricts or limits a LEC's access to the property or enters into an agreement with a communications service provider that restricts or limits an LEC's access to the property or grants incentives or rewards to such owner or developer contingent upon such restriction or limitation; or
- Restricts or limits the types of services that may be provided by a LEC or enters into an agreement with a communications service provider which restricts or limits the types of services that may be provided by a LEC.

This bill also requires a LEC, with COLR obligations, to give timely notice to the PSC when the above circumstances exist and prevent or impede it from providing basic service to the occupants of a business or residential multi-tenant building or development.

If a LEC is not automatically relieved of its COLR obligation, it may seek a waiver of this obligation from the PSC for good cause based on facts and circumstances of provisioning services to the multi-tenant property. When the COLR petitions the PSC it shall provide notice to the building owner or developer. The PSC has 90 days to act on the petition, and shall implement this paragraph through rulemaking.

If the condition for which the LEFC is relieved of its COLR obligation ceases to exist, and the property's owner or developer provides a written request to the LEC to make service available to customers at the property, and the owner has not arranged and does not intend to arrange with another communications service provider to make service available to customers at the property, the COLR obligation again applies to the LEC, however the LEC may recover from the owner or developer a reasonable fee to recover costs that exceed the costs that would have been incurred to construct or acquire the facilities to serve the customers initially. Additionally, the COLR shall have a reasonable period of time following the request to make arrangements for service availability. If the conditions that allow the LEC to be

relieved of its COLR obligation again exist on a property, the LEC is then again relieved of its COLR obligation.

Nothing in the bill affects the limitations on PSC jurisdiction imposed by s. 364.011 or s. 364.013, F.S.[4]

C. SECTION DIRECTORY:

Section 1 creates s. 364.025(6), F.S., related to carrier of last resort obligations for telecommunications carriers.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the PSC to implement the paragraph relating to waivers through rulemaking.

[4] Section 364.011, F.S., provides for exemptions from the PSC's jurisdiction and s. 364.013, provides that broadband and VoIP services are free from state regulation except as delineated in ch. 364, F.S., or in federal law.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 23, 2006, the Utilities & Telecommunications Committee adopted a strike-all amendment. This amendment:

- Changed all references "eligible telecommunications carrier" to the more appropriate "local exchange telecommunication company."
- Narrowed the definition of "communications service."
- Removed a circumstance where companies would be relieved of the COLR obligation where the owner or developer restricts or limits the type of service the COLR can provide.
- Added a provision allowing LECs to petition the PSC for a waiver of the COLR obligation.
- Added a provision for after a COLR is relieved of its obligation, it would again have the COLR obligation.

This bill was then reported favorably with a CS.

On March 30, 2006, the Business Regulation Committee adopted one amendment. This amendment clarified that a COLR is automatically relieved of its obligation when the COLR's access is specifically limited by an agreement between a property owner and a competing carrier. This bill was then reported favorably with a CS.

CHAMBER ACTION

The Business Regulation Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to telecommunications carriers of last resort; amending s. 364.025, F.S.; providing definitions; providing that a local exchange telecommunications company obligated to serve as the carrier of last resort is not obligated to provide basic local telecommunications service to customers in a multitenant business or residential property under certain circumstances; requiring the local exchange telecommunications company to notify the Public Service Commission when it is relieved of the obligation to provide service; providing for the local exchange telecommunications company to request a waiver of its carrier of last resort obligation from the commission; providing for carrier of last resort obligation to apply when specified conditions cease to exist; providing for effect of the act on the commission's jurisdiction; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (6) is added to section 364.025, Florida Statutes, to read:

364.025 Universal service.--

(6)(a) For purposes of this subsection:

1. "Owner or developer" means the owner or developer of a multitenant business or residential property, any condominium association or homeowners' association thereof, or any other person or entity having ownership in or control over the property.

2. "Communications service provider" means any person or entity providing communications services, any person or entity allowing another person or entity to use its communications facilities to provide communications services, or any person or entity securing rights to select communications service providers for a property owner or developer.

3. "Communications service" means voice service or voice replacement service through the use of any technology.

(b) A local exchange telecommunications company obligated by this section to serve as the carrier of last resort is not obligated to provide basic local telecommunications service to any customers in a multitenant business or residential property, including, but not limited to, apartments, condominiums, subdivisions, office buildings, or office parks, when the owner or developer thereof:

1. Permits only one communications service provider to install its communications service-related facilities or equipment, to the exclusion of the local exchange

telecommunications company, during the construction phase of the property;

2. Accepts or agrees to accept incentives or rewards from a communications service provider that are contingent upon the provision of any or all communications services by one or more communications service providers to the exclusion of the local exchange telecommunications company;

3. Collects from the occupants or residents of the property charges for the provision of any communications service, provided by a communications service provider other than the local exchange telecommunications company, to the occupants or residents in any manner, including, but not limited to, collection through rent, fees, or dues; or

4. Enters into an agreement with a communications service provider that grants incentives or rewards to such owner or developer contingent upon restriction or limitation of the local exchange telecommunications company's access to the property.

(c) The local exchange telecommunications company relieved of its carrier of last resort obligation to provide basic local telecommunications service to the occupants or residents of a multitenant business or residential property pursuant to paragraph (b) shall notify the commission of that fact in a timely manner.

(d) A local exchange telecommunications company that is not automatically relieved of its carrier-of-last-resort obligation pursuant to subparagraphs (b)1.-4. may seek a waiver of its carrier of last resort obligation from the commission for good cause shown based on the facts and circumstances of

provision of service to the multitenant business or residential property. Upon petition for such relief, notice shall be given by the company at the same time to the relevant building owner or developer. The commission shall have 90 days to act on the petition. The commission shall implement this paragraph through rulemaking.

(e) If all conditions described in subparagraphs (b)1.-4. cease to exist at a property, the owner or developer requests in writing that the local exchange telecommunications company make service available to customers at the property and confirms in writing that all conditions described in subparagraphs (b)1.-4. have ceased to exist at the property, and the owner or developer has not arranged and does not intend to arrange with another communications service provider to make communications service available to customers at the property, then the carrier of last resort obligation under this section shall again apply to the local exchange telecommunications company at the property; however, the local exchange telecommunications company may require that the owner or developer pay to the company in advance a reasonable fee to recover costs that exceed the costs that would have been incurred to construct or acquire facilities to serve customers at the property initially, and the company shall have a reasonable period of time following the request from the owner or developer to make arrangements for service availability. If any conditions described in subparagraphs (b)1.-4. again exist at the property, then paragraph (b) shall again apply.

(f) Nothing in this subsection affects the limitations on commission jurisdiction imposed by s. 364.011 or s. 364.013.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 857 Insurance Premium Tax
SPONSOR(S): Mahon
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1714

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance & Tax Committee	8 Y, 0 N	Levin	Diez-Arguelles
2) Civil Justice Committee		Blalock	Bond
3) Fiscal Council			
4)			
5)			

SUMMARY ANALYSIS

Title insurance is sold as part of the initial purchase or refinance of real property, and the purchaser of the title insurance pays a premium for the insurance coverage.

This bill reduces the amount of the premiums for title insurance subject to the 1.75 percent tax. The 1.75 percent tax on title insurance is due only on that portion of the title insurance premium that is not paid as a commission to a title insurance agent. This change is implemented over a three year period, with 80 percent of the total premium subject to the tax in 2007, 55 percent in 2008, and up to 30 percent in 2009 and subsequent years.

This bill also amends the definition of "premium" by removing the reference to the 1.75 percent tax, in conformity to the other changes in the bill.

This bill appears to have a negative fiscal impact on state government revenues and does not appear to have a fiscal impact on state government expenditures. This bill does not have a fiscal impact on local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Ensures lower taxes -- This bill will decrease premium taxes paid on title insurance policies.

B. EFFECT OF PROPOSED CHANGES:

Background

Part III, chapter 624, F.S., a portion of the Florida Insurance Code, contains the general requirements an insurer must follow to receive a certificate of authority to transact business in Florida. The Department of Financial Services (DFS) regulates the insurance industry in Florida.

Section 624.509, F.S., imposes a tax of 1.75 percent on the gross amount of premiums on title insurance.

The tax is due for all insurance premiums, including title insurance, health, life, property, and insurance to cover property, subjects, or risks located or to be performed within Florida. The law also taxes premiums for wet marine and transportation insurance and for annuity policies, but at a rate lower than the 1.75-percent of gross receipts due for all other policies.

Insures remit taxes quarterly to the Department of Revenue (DOR). Section 624.509, F.S., specifies that the insurance premium taxes are to be deposited into the state's General Revenue Fund pursuant to rules of DOR.

Title Insurance

Chapter 627, F.S., regulates insurance rates and contracts; part XIII of that chapter, which encompasses ss. 627.7711 through 627.798, F.S., governs title insurance contracts specifically.

Title insurance is sold as part of the initial purchase or refinance of real property. A title search is conducted by an attorney or other qualified person. A title search examines ownership of a parcel of property through its years of ownership. The primary goal of a title search is to establish that all previous liens have been satisfied, that property boundaries are clear and unobstructed, and that any easements are well-defined and included in the description of the property.

Section 627.7711, F.S., contains definitions relating to the regulation of title insurance. As part of the definitions, the word "premium" means the charge made by a title insurer for a title insurance policy, including the charge related to title services, and the assumption of the risks associated with such a policy. The definition indicates that the word "premium" as used throughout part XIII of the law governing title insurance does not include commission. As a practical matter, the definition of premium with respect to title insurance includes the gross amount collected for title insurance, without consideration for any portion of the premium that is paid to the insurance carrier, agent, or agency as a commission. Staff of DFS report that commissions paid to title insurance agents frequently constitute 70 percent or more of the total price paid for such insurance. This definition of the word premium as the gross receipts for a policy, without an allowance for a commission, is standard throughout the Florida Insurance Code and the regulation of the different types of insurance policies.

Effect of Bill

This bill amends s. 624.509, F.S., to provide that the 1.75 percent tax on title insurance is due only on that portion of a title insurance premium that is not paid as a commission to an insurance agent. The bill specifies that the commission, and thus the portion of the title insurance premium that is exempt from

the premium tax, may not exceed 20 percent of the total price paid for the title insurance in 2007; 45 percent in 2008; and 70 percent for 2009 and subsequent years.

This bill amends the definition for title insurance premium in s. 627.7711, F.S., to delete a cross-reference to section 624.509, F.S. This change conforms to the other changes proposed by the bill regarding the 1.75 percent.

C. SECTION DIRECTORY:

Section 1 amends s. 624.509, F.S., to exempt up to 70 percent of the gross receipts resulting from title insurance premiums from the 1.75 percent tax due on all insurance premiums, except annuity policies and contracts.

Section 2 amends s. 627.7711, F.S., the definitions that apply to title insurance contracts. This bill deletes a cross-reference to s. 624.509, F.S., to conform to the change made by Section 1.

Section 3 provides an effective date of January 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference considered the fiscal impact of this bill at its meeting on February 24, 2006.

	FY 2006-2007	FY 2007-2008
General Revenue	-$2.6 million	-$7.6 million

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

When fully implemented, the provisions of this bill will result in a reduction of $11.3 million in state revenues in future years.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

A bill to be entitled

An act relating to the insurance premium tax; amending s. 624.509, F.S.; providing for separate taxation of certain title insurance gross receipts; providing limitations; amending s. 627.7711, F.S.; revising the definition of the term "premium"; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (1) of section 624.509, Florida Statutes, is amended to read:

624.509 Premium tax; rate and computation.--

(1) In addition to the license taxes provided for in this chapter, each insurer shall also annually, and on or before March 1 in each year, except as to wet marine and transportation insurance taxed under s. 624.510, pay to the Department of Revenue a tax on insurance premiums, premiums for title insurance, or assessments, including membership fees and policy fees and gross deposits received from subscribers to reciprocal or interinsurance agreements, and on annuity premiums or considerations, received during the preceding calendar year, the amounts thereof to be determined as set forth in this section, to wit:

(a) An amount equal to 1.75 percent of the gross amount of such receipts on account of life and health insurance policies covering persons resident in this state and on account of all other types of policies and contracts, ~~(~~except annuity policies or contracts taxable under paragraph (b) and title insurance

policies or contracts written through affiliated and nonaffiliated agencies taxable under paragraph (c), ~~+~~ covering property, subjects, or risks located, resident, or to be performed in this state, omitting premiums on reinsurance accepted, and less return premiums or assessments, but without deductions:

1. For reinsurance ceded to other insurers;

2. For moneys paid upon surrender of policies or certificates for cash surrender value;

3. For discounts or refunds for direct or prompt payment of premiums or assessments; and

4. On account of dividends of any nature or amount paid and credited or allowed to holders of insurance policies; certificates; or surety, indemnity, reciprocal, or interinsurance contracts or agreements.~~; and~~

(b) An amount equal to 1 percent of the gross receipts on annuity policies or contracts paid by holders thereof in this state.

(c) An amount equal to 1.75 percent of the gross receipts on title insurance written through affiliated and nonaffiliated agencies, less the portion of the gross receipts retained by or paid under contract to the affiliated and nonaffiliated title insurance agents. The reduction in the insurer's total amount of title insurance premium gross receipts received through affiliated and nonaffiliated agencies may not exceed the following percentages of the total title insurance premium gross receipts received by the insurer through affiliated and nonaffiliated agencies:

1. For 2007, 20 percent.

2. For 2008, 45 percent.

3. For 2009 and subsequent years, 70 percent.

Section 2. Subsection (2) of section 627.7711, Florida Statutes, is amended to read:

627.7711 Definitions.--As used in this part, the term:

(2) "Premium" means the charge, as specified by rule of the commission, that is made by a title insurer for a title insurance policy, including the charge for performance of primary title services by a title insurer or title insurance agent or agency, and incurring the risks incident to such policy, under the several classifications of title insurance contracts and forms~~, and upon which charge a premium tax is paid under s. 624.509~~. As used in this part or in any other law, with respect to title insurance, the word "premium" does not include a commission.

Section 3. This act shall take effect January 1, 2007.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1323 Actions Involving Free Speech or Defamation
SPONSOR(S): Simmons; Sansom
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1346

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee		Shaddock	Bond
2) Judiciary Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

A false light invasion of privacy lawsuit is based on a legal theory which allows a plaintiff to sue for damages due to publicity that places the plaintiff in a "false light." The civil action of false light arises either when something factually untrue has been communicated about an individual, or when the communication of true information carries a false implication. The damages awarded under the false light cause of action are intended to remedy the emotional distress caused by the depiction of the plaintiff.

This bill modifies the presuit requirements, the elements of, the statute of limitation applicable to, and the privileges and defenses available to a false light action.

This bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty -- This bill decreases the probability that individuals who sue newspapers and reporters under a theory of placing a person in false light will prevail.

B. EFFECT OF PROPOSED CHANGES:

Background on False Light

"Since its inception, critics have questioned and greatly criticized the existence of the false light form of invasion of privacy. Because it is similar to the more respected tort of defamation, it is attacked as a method of avoiding the constitutional protections of free speech and press that have developed in defamation."[1]

> The greatest advantage presented by a false light cause of action is that an action or publication need not be defamatory before it is actionable. It is possible for a plaintiff to recover for a so-called "laudatory" false light. Laudatory false light recognizes that the mere publication of a false impression can be damaging to a plaintiff whether or not it is technically defamatory. In order to recover in defamation, a plaintiff must prove that the communication "lower[ed] him in the estimation of the community or ... [would] deter third persons from associating or dealing with him." By contrast, in a false light cause of action, the plaintiff must prove that the statement is false, and that the plaintiff was portrayed in a manner that "would be highly offensive to a reasonable person."[2]

The first case involving invasion of privacy to be heard by the U.S. Supreme Court was a false light case. In *Time, Inc. v. Hill*, 385 U.S. 374 (1967), the Court held that in order for a plaintiff to recover in a false light action for invasion of privacy, the plaintiff must demonstrate that the defendant published the statements with knowledge of their falsity or in reckless disregard of their truth. In the ruling, the Court acknowledged both the similarities and the distinctions between defamation and invasion of privacy.[3]

The *Time* Court "noted that an actionable statement under false light need not be defamatory, and could in fact be laudatory."[4] Further, the primary harm compensated in an invasion of privacy action is the mental distress caused by exposure to public view, rather than damage to reputation.[5] However, a successful plaintiff under either theory must prove the material falsity of the publication, as well as the publisher's knowledge of the falsity or reckless disregard for the truth.[6]

The second false light case heard by the U.S. Supreme Court was *Cantrell v. Forest City Publishing Co*, 419 U.S. 245 (1974).[7] The Supreme Court reaffirmed the decision in *Time* calling for actual knowledge of falsity or reckless disregard for the truth in order to establish the defendant's liability.[8]

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[1] Bryan R. Lasswell, *In Defense of False Light: Why False Light Must Remain A Viable Cause of Action*, 34 S. Tex. L. Rev. 149 (1993).
[2] Lasswell, 34 S. Tex. L. Rev. at 172.
[3] Lasswell, 34 S. Tex. L. Rev. at 155.
[4] Lasswell, 34 S. Tex. L. Rev. at 156.
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*

Background from Restatement of Torts[9]

The Restatement Second of Torts ("Restatement") provides the following explanation of the tort of false light.

> One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if
>
> (a) the false light in which the other was placed would be highly offensive to a reasonable person, and
>
> (b) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.[10]

The Restatement clarifies the elements of a false light claim with the comment that "[t]he form of invasion of privacy covered by the rule stated in this Section does not depend upon making public any facts concerning the private life of the individual. On the contrary, it is essential to the rule stated in this Section that the matter published concerning the plaintiff is not true. The rule stated here is, however, limited to the situation in which the plaintiff is given publicity."[11]

The Restatement is clear that "[i]t is not, however, necessary to the action for invasion of privacy that the plaintiff be defamed. It is enough that he is given unreasonable and highly objectionable publicity that attributes to him characteristics, conduct or beliefs that are false, and so is placed before the public in a false position.[12]

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[9] The Restatement Second of Torts is a publication of the American Law Institute.

> The American Law Institute was organized in 1923 following a study conducted by a group of prominent American judges, lawyers, and teachers known as "The Committee on the Establishment of a Permanent Organization for the Improvement of the Law." The Committee had reported that the two chief defects in American law, its uncertainty and its complexity, had produced a "general dissatisfaction with the administration of justice.
>
> ****
>
> The founding Committee had recommended that the first undertaking of The American Law Institute should address uncertainty in the law through a restatement of basic legal subjects that would tell judges and lawyers what the law was. The formulation of such a restatement thus became the first endeavor of the Institute. Between 1923 and 1944, Restatements of the Law were developed for Agency, Conflict of Laws, Contracts, Judgments, Property, Restitution, Security, Torts, and Trusts. In 1952, the Institute started Restatement Second—new editions of the original Restatements that updated them, reflected new analyses and concepts, and expanded upon the authorities used in reaching the conclusions set forth. Restatement Second also treated subjects not included in the first Restatement, such as Landlord and Tenant and the Foreign Relations Law of the United States. In 1987 a new Restatement of the Foreign Relations Law of the United States inaugurated a third series of Restatements, which also now includes Restatements of Unfair Competition, Property (Mortgages and Servitudes), Suretyship and Guaranty, Torts (Products Liability and Apportionment of Liability), and The Law Governing Lawyers. New Restatements on Agency, Property (Wills and Other Donative Transfers), Restitution and Unjust Enrichment, Trusts, Torts (Liability for Physical Harm), and Employment Law are also being developed as part of Restatement Third. The Restatement Case Citations are additional aids designed to provide easy access to court decisions that cite the Restatements.

About the American Law Institute (last visited Mar. 29, 2006) <http://www.ali.org/ali/thisali.htm>.

[10] Restatement (Second) of Torts s. 652E cmt. A (1977).

[11] *Id.*

[12] *Id.* s. 652E cmt. B.

As for damages, the Restatement provides that a plaintiff may recover compensatory damages for the harm to the plaintiff's reputation, and emotional distress or humiliation.[13] It is also possible that a plaintiff could recover special damages so long as they are pleaded and proved.[14]

Finally, "the right protected by the action for invasion of privacy is a personal right, peculiar to the individual whose privacy is invaded." [15] Therefore, such a cause of action "is not assignable, and it cannot be maintained by other persons such as members of the individual's family, unless their own privacy is invaded along with his. The only exception to this rule involves the appropriation to the defendant's own use of another's name or likeness."[16]

Florida's Privacy Actions

"The right to one's person may be said to be a right of complete immunity: to be let alone."[17] That phrase encapsulates Florida's concept of the privacy actions or torts.[18]

The law recognizes a right of privacy in our tort law,[19] and there are four types "of wrongful conduct that can all be remedied with resort to an invasion of privacy action."[20] These four privacy actions are:

> (1) appropriation--the unauthorized use of a person's name or likeness to obtain some benefit; (2) intrusion--physically or electronically intruding into one's private quarters; (3) public disclosure of private facts--the dissemination of truthful private information which a reasonable person would find objectionable; and (4) false light in the public eye--publication of facts which place a person in a false light even though the facts themselves may not be defamatory.[21]

Of the four invasion of privacy torts, "only false-light invasion of privacy contemplates any issue of falsehood, and even then, the tort may exist when the facts published are completely true."[22]

Element of a False Light Claim

In order to succeed on a case alleging false light, the plaintiff must demonstrate: (1) the false light must be highly offensive to a reasonable person; and (2) the defendant must have acted either knowingly or in reckless disregard as to the falsity of the publicized material and the false light in which it would be placed.[23] Neither knowledge of the falsity of the information nor reckless disregard for the truth is an element of a cause of action for false light.[24]

The bill provides new elements for the tort of false light. A person may not be held liable for publishing a matter concerning an individual which places that individual before the public in a false light, unless:

- The published matter is false;

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[13] *Id.* s. 652H cmts. A-B.
[14] *Id.* s. 652H cmt. D.
[15] Restatement (Second) of Torts s. 652I cmt. A.
[16] Restatement (Second) of Torts s. 652I cmt. A.
[17] *Forsberg v. Housing Auth. Of the City of Miami Beach*, 455 So. 2d 373, 376 (Fla. 1984).
[18] A tort is defined as: "a civil wrong for which a remedy may be obtained, usu[ally] in the form of damages; a breach of a duty that the law imposes on everyone in the same relation to one another as those involved in a given transaction." Black's Law Dictionary 1497 (7th ed 1999)
[19] *Agency for Health Care Admin. v. Associated Indus. of Fla., Inc.*, 678 So.2d 1239, 1252 (Fla.1996).
[20] *Agency for Health Care Admin.*, 678 So.2d 1252 n. 20.
[21] *Agency for Health Care Admin.*, 678 So.2d 1252 n. 20.
[22] 19A Fla. Jur. 2d Defamation and Privacy s. 222 (citing *Heekin v. CBS Broad., Inc.*, 789 So. 2d 355 (Fla. 2d DCA 2001)).
[23] 19A Fla. Jur. 2d Defamation and Privacy s. 222 (citing *Lane v. MRA Holdings, LLC*, 242 F. Supp. 2d 1205 (M.D. Fla. 2002); *Harris v. Dist. Bd. of Trs. of Polk Cmty. College*, 9 F. Supp. 2d 1319, (M.D. Fla. 1998)).
[24] 19A Fla. Jur. 2d Defamation and Privacy s. 222 (citing *Heekin*).

- The false fact placed the individual in a false light that is highly offensive to a reasonable person;

- The person making the publication acted knowingly or in reckless disregard as to the falsity of the fact publicized; and

- The person making the publication acted knowingly or in reckless disregard as to the false light in which the individual would be placed.

Statute of Limitations

Since no defamation is required for an invasion of privacy claim, the statute of limitations for defamation[25] actions (2 years) does not apply to invasion of privacy actions.[26] Therefore, the four-year general statute of limitations, in s. 95.11(3)(p), F.S. applies to false light claims.[27]

The bill provides for a two year statute of limitations on an action for false light. Specifically, an action must be filed within 2 years after the first publication of the matter that forms the basis of the claim.

The bill further provides that a cause of action for damages founded upon a single publication accrues at the time of the first publication in this state. A judgment in any jurisdiction for or against the plaintiff upon the substantive merits of any action for damages founded upon a single publication bars any other action for damages by the same plaintiff against the same defendant founded upon the same publication.[28]

Selection of Remedies

The law provides that a "plaintiff may not avoid the two-year statute of limitations for defamation actions by simply renaming the defamation action as one for false light invasion of privacy."[29]

The bill provides that an action may for false light not be brought or maintained if a claim based upon the same published fact or facts is, or could be, brought under the common law of defamation.

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[25] Despite a similarity of elements, false light and defamation are independent torts. Defamation involves injury to reputation; false light involves injury to the person, primarily through mental and emotional distress. The elements of defamation are as follows:

> A common law claim for defamation requires the unprivileged publication (to a third party) of a false and defamatory statement concerning another, with fault amounting to at least negligence on behalf of the publisher, with damage ensuing. A communication is "defamatory" if it tends to harm the reputation of another as to lower him or her in estimation of community or deter third persons from associating or dealing with the defamed party.

Mile Marker, Inc. v. Petersen Publ'g, L.L.C, 811 So. 2d 841, 845 (Fla. 4th DCA 2002)(internal citations omitted).

[26] *Id.*

[27] *Heekin*, 789 So. 2d at 358.

[28] This provision of the bill appears to be substantially similar to s. 770.06, F.S. which provides for adverse judgments in any jurisdiction. Specifically, s. 770.06, F.S. states: "A judgment in any jurisdiction for or against the plaintiff upon the substantive merits of any action for damages founded upon a single publication or exhibition or utterance as described in s. 770.05 shall bar any other action for damages by the same plaintiff against the same defendant founded upon the same publication or exhibition or utterance."

[29] *Heekin*, 789 So. 2d at 358. The *Heekin* court expounded: "[w]e do, however, recognize one exception to this general rule. When a plaintiff has a cause of action for libel or slander and alleges a claim for false light invasion of privacy based on the publication of the same false facts, the false light invasion of privacy action is barred by the two-year statute of limitations." *Id.*

Burden of Proof

The bill imposes a greater standard of proof in false light cases. Generally, in civil cases the burden of proof is a preponderance of the evidence. The Florida Supreme Court admitted that numerous definitions for preponderance of the evidence, but cited to *McCormick on Evidence* 575 (4th ed.1992) for this definition:

> The most acceptable meaning to be given the expression, proof by a preponderance, seems to be proof which leads the jury to find the existence of the contested fact is more probable than its nonexistence. Thus the preponderance of the evidence becomes the trier's belief in the preponderance of probability.[30]

Another definition for the term is "'evidence preponderates when it is more convincing to the trier than the opposing evidence.'"[31]

This bill imposes a greater standard of proof in false light cases. This bill requires a plaintiff must prove the elements listed above by clear and convincing evidence. This standard of proof has been defined by the Florida Supreme Court as an "intermediate level of proof [that] entails both a qualitative and quantitative standard. The evidence must be credible; the memories of the witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy."[32]

Presuit Requirement

Currently there is no presuit requirement for filing a false light claim.

The bill imposes presuit requirements by providing that ss. 770.01 and 770.02, F.S. apply to all false light actions. Sections 770.01 and 770.02, F.S., require plaintiffs to provide 5 days' written notice to a media defendant before instituting a defamation action in order to give such defendants an opportunity to correct the allegedly defamatory communications. Notice is a jurisdictional condition precedent to filing a defamation claim. If such a correction is published, the plaintiff is limited to recovering actual damages.

Privilege

The bill provides that a publication that is privileged or otherwise protected from liability under the common law of defamation, the First Amendment to the United States Constitution, or s. 4, Art. I of the State Constitution is not subject to liability under this section.[33] A non-exhaustive list of some of the

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[30] *Dept. of Health and Rehabilitative Services v. M.B.*,701 So. 2d 1155 n.20 (Fla. 1997)(citing *McCormick on Evidence* 575 (4th ed.1992).

[31] *Dept. of Health*,701 So. 2d at 1155 n.20.

[32] G.W.B., v. J.S.W., 658 So. 2d 951, 967 (Fla 1995)(citing *In re Davey*, 645 So. 2d 398, 404 (Fla. 1994)).

[33] The Restatement provides guidance on this point:

> The free-speech and free-press provisions of the First Amendment have been held to apply to the common law of defamation and to impose certain restrictions on the availability of defamation actions. In *New York Times Co. v. Sullivan* (1964) 376 U.S. 254, it was held that a public official could not recover for a false and defamatory publication unless he proved by clear and convincing evidence that the defendant had knowledge of the falsity of the statement or acted in reckless disregard of its truth or falsity. This rule was later extended to public figures. In the case of *Time, Inc. v. Hill* [385 U.S. 534 (1967)], involving a magazine pictorial treatment of a play based upon a real episode, which implied that certain fictitious incidents in the play transpired with the real-life parties, the Supreme Court held that the rule of New York Times Co. v. Sullivan also applies to the false-light cases covered by this Section. It is on the basis of Time v. Hill that Clause (b) has been set forth. The full extent of the authority of this case, however, is presently in some doubt.

affirmative defenses and privileges under Florida law for defamation are: truth coupled with a good motive;[34] pure opinion;[35] immunity from defamation liability to former employer for disclosure of information about former employee's job performance to prospective employer;[36] and a statement made by one who has a duty or interest in the matter.[37]

Preclusion

It has been held that since privacy rights are personal, they die with the individual.[38] Therefore, in order to bring a false light action, a plaintiff must be alive.

The bill precludes a false light action, on or behalf of, a deceased person.

Retroactivity

The bill provides that it is the expressed intent of the Legislature that this bill applies retroactively.

C. SECTION DIRECTORY:

Section 1 creates s. 770.09, F.S. relating to actions for false light.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

Although the Supreme Court had extended the rule of *New York Times Co. v. Sullivan* in defamation cases beyond public officials and public figures to all "matters of public or general interest," by a plurality opinion in *Rosenbloom v. Metromedia, Inc.*, [403 U.S. 29 (1970)], this position was subsequently repudiated in *Gertz v. Robert Welch, Inc.*, [418 U.S. 323 (1974)], which restricted the knowledge-or-reckless-disregard rule again to public officials and public figures, but held that in other cases the plaintiff must show that the defendant was at fault, at least to the extent of being negligent, regarding the truth or falsity of the statement. The effect of the Gertz decision upon the holding in Time, Inc. v. Hill has thus been left in a state of uncertainty. In *Cantrell v. Forest City Pub. Co.* [419 U.S. 425 (1974)], the court found that the defendant was shown to have acted in reckless disregard as to the truth or falsity of the statement, and it consciously abstained from indicating the present authority of Time v. Hill.

Pending further enlightenment from the Supreme Court, therefore, this Section provides that liability for invasion of privacy for placing the plaintiff in a false light may exist if the defendant acted with knowledge of the falsity of the statement or in reckless disregard as to truth or falsity. The Caveat leaves open the question of whether there may be liability based on a showing of negligence as to truth or falsity. If *Time v. Hill* is modified along the lines of *Gertz v. Robert Welch*, then the reckless-disregard rule would apparently apply if the plaintiff is a public official or public figure and the negligence rule will apply to other plaintiffs. If *Time v. Hill* remains in full force and effect because the injury is not so serious when the statement is not defamatory, the blackletter provision will be fully controlling.

[34] *Lipsig v. Ramlawi*, 760 So. 2d 170, 183 (Fla. 3d DCA 2000).

[35] *From v. Tallahassee Democrat, Inc.*, 400 So. 2d 52, 57 (Fla. 1st DCA 1981).

[36] *Linafelt v. Beverly Enterprises-Florida*, 745 So.2d 386, 388 (Fla. 1st DCA 1999).

[37] *Schreidell v. Shoter*, 500 So. 2d 288, 230 (Fla. 3d DCA 1987). The *Schreidell* court stated: The Florida Supreme Court in *Coogler v. Rhodes*, 38 Fla. 240, 248, 21 So. 109, 112 (1897) (citing Townshend on Slander & Libel s. 209 (4th ed.)), first enunciated the concept of a qualified privilege: Where a person is so situated that it becomes right, in the interests of society, that he should tell to a third person certain facts, then, if he bona fide, and without malice, does tell them, it is a privileged communication. Thus, a statement is qualifiedly privileged if made by one who has a duty or interest in the subject matter to one who has a corresponding duty or interest (some internal citations omitted).

[38] *Nestor v. Posner-Gerstenhaber*, 857 So. 2d 953, 955 (Fla. 3d DCA 2003) (citing *Williams v. City of Minneola*, 575 So. 2d 683, 689 (Fla. 5th DCA 1991)(citing Restatement (Second) of Torts s. 652I)).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Prospective and Retrospective Effect of a Change in Statutory Law

Florida law provides that retroactive application of a statute is possible depending on the outcome of two inquiries. *Romine v. Fla. Birth Related Neurological Injury Comp. Ass'n,* 842 So.2d 148, 153 (Fla. 5th DCA 2003). First, is there clear legislative intent for the statute to apply retroactively? If not then that ends the inquiry and the statute will only apply prospectively. *Romine*, 842 So. 2d at 153. Second, would the retroactive application of the statute be constitutional? In other words, "[c]ourts will not permit the retroactive application of a statute if the statute impairs vested rights, creates new obligations, or imposes new penalties ..." *Romine*, 842 So. 2d at 153.

The bill expressly provides for the retroactive application of the changes to the false light torts. Therefore, the sole question before this Court is whether or not the changes to the Act would impair a vested right. A vested right has been defined as:

> an immediate, fixed right of present or future enjoyment and also as an immediate right of present enjoyment, or a present, fixed right of future enjoyment. To be vested, a right must be more than a mere expectation based on an anticipation of the continuance of an existing law; it must have become a title, legal or equitable, to the present or future enforcement of a demand. Vested rights are distinguished not only from expectant rights but also from contingent rights. Rights are vested, in contradistinction to being expectant or contingent. They are vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons, as a present interest. They are expectant when they depend upon the continued existence of the present condition of things until the happening of some future event. They are

contingent when they are only to come into existence on an event or condition which may not happen or be performed until some other event may prevent their vesting.

R.A.M of South Fla., Inc., v. WCI Communities, Inc., 869 So.2d 1210, 1218 (Fla. 2d DCA 2004)(internal citations and quotations omitted).

It is unclear if the presuit and the higher standard of proof requirements in this bill would impinge upon a vested rights for cases filed before the enactment of this bill.

Selection of Remedies

It is unclear if the bill's limitation that a false light action may not be "brought or maintained" if a claim for defamation "is, or could be, brought" for the same facts, preclude pleading in the alternative by a plaintiff.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is unclear if the bill's limitation that a false light action may not be "brought or maintained" if a claim for defamation "is, or could be, brought" for the same facts, preclude pleading in the alternative by a plaintiff.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

A bill to be entitled

An act relating to actions involving free speech or defamation; creating s. 770.09, F.S.; clarifying criteria for liability for publishing a matter concerning an individual which places that individual before the public in a false light; providing for a civil action to recover damages; requiring that the person bringing the action plead and prove by clear and convincing evidence the elements of the claim; providing that certain privileged publications are not subject to liability under the act; limiting the period in which to commence an action; providing that the Legislature intends that the act apply retroactively; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 770.09, Florida Statutes, is created to read:

770.09 Publicity placing a person in a false light.--

(1) A person may not be held liable for publishing a matter concerning an individual which places that individual before the public in a false light, unless:

(a) The matter published relates to a fact that is false;

(b) The false fact placed the individual in a false light that is highly offensive to a reasonable person;

(c) The person making the publication acted knowingly or in reckless disregard as to the falsity of the fact publicized; and

(d) The person making the publication acted knowingly or in reckless disregard as to the false light in which the individual would be placed.

(2) A person may bring a civil action under this section to recover damages sustained by reason of the false light in which he or she was placed, except that ss. 770.01 and 770.02 apply to all actions under this section.

(3) In any action under this section, the person bringing the action has the burden to plead and prove by clear and convincing evidence the elements set forth in subsection (1).

(4) A publication that is privileged or otherwise protected from liability under the common law of defamation, the First Amendment to the United States Constitution, or s. 4, Art. I of the State Constitution is not subject to liability under this section.

(5) An action may not be brought or maintained under this section if a claim based upon the same published fact or facts is, or could be, brought under the common law of defamation.

(6) A cause of action for damages founded upon a single publication as described in this section accrues at the time of the first publication or exhibition or utterance thereof in this state. A judgment in any jurisdiction for or against the plaintiff upon the substantive merits of any action for damages founded upon a single publication as described in this section bars any other action for damages by the same plaintiff against the same defendant founded upon the same publication.

(7) An action may not be brought or maintained under this section by, or on behalf of, a person who is deceased.

(8) An action under this section must be commenced within 2 years after the first publication of the matter that forms the basis of the claim.

(9) It is the expressed intent of the Legislature that this section applies retroactively.

Section 2. This act shall take effect July 1, 2006.

HB 1521

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1521 Children in Out-of-Home Placements
SPONSOR(S): Barreiro
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1732

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee		Shaddock	Bond
2) Health Care Appropriations Committee			
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Abused, neglected, abandoned and orphaned children are placed in the foster care system under the supervision of the Department of Children and Family Services ("DCF"), pending reunification with their parents, adoption, or other placement as appropriate. Foster parents and their foster children sometimes develop close emotional bonds that are harmed when the foster children are removed from the foster home. Current law places some limits upon moving a dependent child after a disposition hearing has been conducted and the dependent child is in a placement.

This bill further limits the ability of DCF to move a dependent child from a current out-of-home placement by creating a rebuttable presumption that it is in the best interests of a dependent child who has resided in a particular out-of-home placement for one than 1 year to remain in that placement with the foster parent as the permanent custodian.

The bill also requires that a foster child who has been denied developmental disabilities services must be given an opportunity for an administrative hearing before the Division of Administrative Hearings (DOAH).

The Department of Children and Family Services estimates that this bill may have a recurring negative fiscal impact on state revenues of $16 million annually commencing in FY 2005-2006. This bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families -- This bill may provide stability for foster children, but may interfere with reunification of such foster children with their parents.

B. EFFECT OF PROPOSED CHANGES:

Background - Moving Foster Children

Chapter 39, F.S., provides for proceedings regarding dependency of minor children. A dependent child is one that is dependent upon the state for services due to abuse, neglect, abandonment, or death of the parents or guardian. Once a child is adjudicated dependent, the court has the power by order to:

- Require the parent or the legal custodian and the child, to participate in necessary treatment and services;
- Require the parties to participate in dependency mediation; and
- Require placement of the child either under the protective supervision of an authorized agent of the Department of Children and Family Services ("DCF"), in the home of one or both of the child's parents, in the home of a relative of the child, with another adult approved by the court, or in the custody of the DCF.[1]

In 2000, the legislative enacted s. 39.522, F.S., regarding change of custody after the disposition hearing. The statute provides:

- A child who has been placed in the child's own home under the protective supervision of an authorized agent of the department, in the home of a relative, in the home of a legal custodian, or in some other place may be brought before the court by the department or by any other interested person, upon the filing of a petition alleging a need for a change in the conditions of protective supervision or the placement.
- If the parents or other legal custodians deny the need for a change, the court must hear all parties in person or by counsel, or both. Upon the admission of a need for a change or after such hearing, the court must enter an order changing the placement, modifying the conditions of protective supervision, or continuing the conditions of protective supervision as ordered.
- The standard for changing custody of the child is the best interest of the child.
- If the child is not placed in foster care, then the new placement for the child must meet the home study criteria and court approval pursuant to this chapter.
- In cases where the issue before the court is whether a child should be reunited with a parent, the court must determine whether the parent has substantially complied with the terms of the case plan to the extent that the safety, well-being, and physical, mental, and emotional health of the child is not endangered by the return of the child to the home.

[1] 25 Fla. Jur. 2d, Family Law s. 273.

Section 39.701(9)(f), F.S., requires the dependency court to review a child's permanency no later than 12 months after a child was sheltered.[2] Section 39.621, F.S., identifies adoption as the primary permanency option when reunification with a parent is not appropriate.

Section 39.812(4), F.S., provides that, when the department denies foster parents' applications to adopt a child, the Department of Children and Families ("department") must obtain court approval in order to remove the child from the foster home if the child has resided there for at least 6 months.

If the parents or other legal custodians deny the need for a change, the court must hear all parties in person or by counsel, or both. Upon the admission of a need for a change or after a hearing, the court can order a change in the placement, modify the conditions of supervision, or continue the conditions of supervision. If the child is not placed in foster care, then the new placement for the child must meet the home study criteria and court approval pursuant to ch. 39, F.S.[3]

Effect of Bill - Moving Foster Children

This bill first adds foster homes to the list of placements from which a child can be moved pursuant to a postdisposition change of custody. Further, the bill expands who a court must hear in determining the need for a change in custody. If a need for a change of custody has been denied, the court must hear all parties in including the custodian and the interested persons.

The bill also creates a rebuttable presumption that continued placement with the custodian of a child in an out-of-home placement as in the best interest of the child if the child has resided in the same out-of-home placement for more than 1 year. This presumption may not be rebutted solely by the wishes of a parent or by placing the child with a person who is biologically related to the child but who is not living with a parent.

Background - Certain Disability Hearings

All persons who have been denied federally-funded developmental disability services or other public benefits, including foster children, are entitled to a fair hearing conducted by the Office of Appeal Hearings. The fair hearing process is designed to provide relatively rapid and easily accessible due process proceedings to contest the denial, reduction or termination of benefits or services. The fair hearings process is conducted according to federal and state law and rules that ensure the individual's right to due process is protected.[4] Applicants for or recipients of public benefits have the right to appeal an adverse decision in a fair hearing to the District Court of Appeal, but the agency may not seek an appeal.[5]

Effect of Bill - Certain Disability Hearings

Finally, the bill directs that all decision affecting developmental disability benefits of dependent children, who are in the custody of the department, be heard by an administrative law judge, regardless of the facts.

C. SECTION DIRECTORY:

Section 1 amends s. 39.522, F.S. to provide a rebuttable presumption in out-of-home placements.

Section 2 amends s. 63.082, F.S. to include a cross-reference to the rebuttable presumption.

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[2] Sheltered is defined in s. 39.01(64), F.S. as "a placement with a relative or a nonrelative, or in a licensed home or facility, for the temporary care of a child who is alleged to be or who has been found to be dependent, pending court disposition before or after adjudication."
[3] 25 Fla. Jur. 2d, Family Law s. 279.
[4] *See, e.g.,* 42 U.S.C. 1396a(3); 42 CFR 431.200, et seq; s. 409.285, F.S.
[5] Sections 120.68, 409.285, F.S.

Section 3 amends s. 120.80, F.S. to require that hearings be conducted by an administrative law judges in cases involving children with developmental disabilities who are in the custody of the department.

Section 4 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Department of Children and Family Services estimates that this bill may cause the loss of federal matching funds resulting in a loss of $15,952,857.80 annually commencing in FY 2005-2006.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

Department of Children and Families Comments

As of January 31, 2006, there were 8,228 children in licensed out-of-home care classified as Title IV-E Eligible/Reimbursable. As of December 31, 2005, the federal share of the average quarterly cost for these IV-E clients is $1,938.85. A statutory rebuttable presumption regarding the appropriateness of a particular placement, without consideration of case specifics as required by Safe Families and Adoptions Act,, has the potential to cost Florida all or a significant portion of that federal share, up to an anticipated maximum of $15,952,857.80. This does not include the concurrent loss of federal administrative or training funds. However, the legislature could choose to continue state matching funds, in order to provide a reduced level of services.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Department of Children and Families Comments:

Page 2, lines 38-39 which describe who has standing to participate in a postdisposition change of custody hearing, the term "other legal custodians" is changed to "other custodians" and "guardians" is added. These changes will give foster parents the standing to object to a modification of placement, even if that modification were actually reunification with a parent.

Page 2, Lines 38-40, provide that the court shall hear, in addition to all parties, "the custodian and the interested persons in person or by counsel" not only reinforces the provision of standing as discussed above for foster parents, but gives party standing to interested persons who would otherwise be, at best, participants. In other words, foster parents and other interested persons would now be entitled to ask the court for relief in regard to children to whom they have no legal rights.

This bill first adds foster homes to the list of placements from which a child can be moved pursuant to a postdisposition change of custody. This change creates an anomaly, since s. 39.522, F.S., actually provides for modification of legal custody, not modification of physical placements. A foster home is only a physical placement. The actual temporary legal custodian, when a child is in a foster home, is the department. As the legal custodian, the department determines the particular licensed foster care placement for a foster child. Court interference with this determination would violate the separation of power between the judicial and executive branch.

This bill would effect a dramatic expansion of foster parents' rights to custody of dependent children far beyond what the Legislature has provided for in ss. 39.521 or 409.175, F.S. The bill would create a new impediment to the primary goal of reunification, and would create a new ground for litigation in the dependency proceeding that could substantially delay permanency decisions, to the detriment of the child. The bill would, therefore, make it more difficult to comply with the AFSA time parameters.

The bill also adversely impacts the reunification goal by creating a rebuttable presumption that an out-of-home caregiver is the placement that is in the best interest of the child when the same out-of-home placement has continued for more than 12 months. Currently, parents are required by state law to complete case plans within 12 months of a child's removal from the home. The 12-month deadline can be extended under extraordinary circumstances. The effect of the proposed rebuttable presumption would be that, after 12 months, the child's parents would be required to prove that they are superior to the out-of-home placement in order to be reunified with the child upon resolution of the extraordinary circumstances.

There is no "permanent custodian" (see page 2, lines 49-50) currently provided under ch. 39, F.S. Long-term custody is a permissible permanency goal pursuant to s. 39.622, F.S. The "permanent custodian" referenced by the bill appears to be incorporate a concept from another current bill, SB 1080, which

would replace the permanency option of "long-term custodian" with "permanent guardian". The language in the two bills, however, is different. The bill would create a de facto change in the case plan goal on the 366th day of the case, notwithstanding whatever findings a court made regarding the final case plan goal at a permanency hearing prior to the end of the 1st year of an out-of-home placement.

The bill appears to conflict with the Safe Families and Adoptions Act ("ASFA")[6] requirements. AFSA requires the finalization of the case plan goal within 12 months of a child's removal from the home. The case plan goal must be in the best interests of a child, based on the facts and circumstances of that particular child's case. [*See* 45 C.F.R. s. 1356.21(d).] A statutory rebuttable presumption that remaining in a particular placement with a particular person as "permanent custodian" is in a child' best interests is in direct conflict with ASFA requirements.

The language in the bill conflicts with ss 120.569 and 120.57, F.S., because it would direct that all decisions affecting developmental disability benefits of dependent children be heard by an administrative law judge (ALJ), regardless of whether there were disputed issues of material fact. The bill would also place Florida in potential violation of federal law. Subsection 120.80(7), F.S., currently exempts *all* federally funded public benefits decisions from being heard by an administrative law judge, because the federal hearing procedures and requirements (*see* 42 CFR s. 431.200, et seq.) are different from those in ss. 120.569 and 120.57, F.S., and from the Uniform Rules of Procedure that apply to administrative proceedings in Florida. *See* ch. 28-106, F.A.C. To the extent that the federal procedures are different, adherence to the State of Florida Division of Administrative Hearings ("DOAH") requirements would be unlawful.

Additionally, providing that such cases be heard in DOAH would greatly delay their resolution. The Office of Appeal Hearings generally schedules and hears these cases more quickly than DOAH could. Furthermore, the Office of Appeal Hearings has final order authority in these cases, whereas DOAH would not. The client would be required to wait for DOAH to render a Recommended Order, and then for the agency to prepare and issue a Final Order, before the issue were resolved or even ripe for appeal to the District Court of Appeal.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

[6] 42 U.S.C. s. 620, et seq.

A bill to be entitled

An act relating to children in out-of-home placements; amending s. 39.522, F.S.; providing that a rebuttable presumption arises to continue placement with the custodian of a child in an out-of-home placement as in the best interest of the child if the child has resided in the same out-of-home placement for more than 1 year and the custodian is eligible to be the permanent custodian; providing that the presumption is not rebutted solely by the expressed wishes of a parent or by placing the child with a person who is biologically related to the child but who is not living with a parent; amending s. 63.082, F.S.; conforming provisions to changes made by the act; amending s. 120.80, F.S.; requiring that an administrative hearing be conducted by an administrative law judge assigned by the Division of Administrative Hearings in cases involving children with developmental disabilities who are in the custody of the department and placed in out-of-home care who apply for, are denied, or receive reduced developmental disability services under ch. 393, F.S.; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 39.522, Florida Statutes, is amended to read:

39.522 Postdisposition change of custody.--The court may change the temporary legal custody or the conditions of

protective supervision at a postdisposition hearing, without the necessity of another adjudicatory hearing.

(1) A child who has been placed in the child's own home under the protective supervision of an authorized agent of the department, in the home of a relative, in the home of a legal custodian, or in some other place, including a foster home, may be brought before the court by the department or by any other interested person, upon the filing of a petition alleging a need for a change in the conditions of protective supervision or the placement. If the parents, ~~or~~ other ~~legal~~ custodians, or guardian denies ~~deny~~ the need for a change, the court shall hear all parties, the custodian, and the interested persons in person or by counsel, or both. Upon the admission of a need for a change or after the ~~such~~ hearing, the court shall enter an order changing the placement, modifying the conditions of protective supervision, or continuing the conditions of protective supervision as ordered. The standard for changing custody of the child shall be the best interest of the child. If a child has resided in the same out-of-home placement for more than 1 year and the custodian of the child in that out-of-home placement requests and is eligible for consideration as a permanent custodian for the child, a rebuttable presumption arises that continuing the out-of-home placement is in the best interest of the child. This presumption may not be rebutted solely by the expressed wishes of a parent or by placing the child with a person who is biologically related to the child but who is not living with a parent. If the child is not placed in foster care, ~~then~~ the new placement for the child must meet the home study

criteria and court approval pursuant to this chapter.

(2) In cases where the issue before the court is whether a child should be reunited with a parent, the court shall determine whether the parent has substantially complied with the terms of the case plan to the extent that the safety, well-being, and physical, mental, and emotional health of the child is not endangered by the return of the child to the home.

Section 2. Paragraph (d) of subsection (6) of section 63.082, Florida Statutes, is amended to read:

63.082 Execution of consent to adoption or affidavit of nonpaternity; family social and medical history; withdrawal of consent.--

(6)

(d) Subject to s. 39.522(1), when ~~In~~ determining whether the best interest of the child will be served by transferring the custody of the minor child to the prospective adoptive parent selected by the birth parent, the court shall give consideration to the rights of the birth parent to determine an appropriate placement for the child, the permanency offered, the child's bonding with any potential adoptive home that the child has been residing in, and the importance of maintaining sibling relationships, if possible.

Section 3. Subsection (18) is added to section 120.80, Florida Statutes, to read:

120.80 Exceptions and special requirements; agencies.--

(18) AGENCY FOR PERSONS WITH DISABILITIES.--Notwithstanding subsection (7), hearings shall be conducted by an administrative law judge assigned by the

division in cases involving children with developmental disabilities who are in the custody of the department and placed in out-of-home care who apply for, are denied, or receive reduced developmental disability services under chapter 393.

Section 4. This act shall take effect July 1, 2006.

HB 7123

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7123 PCB FFF 06-03 Child Protective Services
SPONSOR(S): Future of Florida's Families Committee; Galvano
TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 1080

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Future of Florida's Families Committee	6 Y, 0 N	Preston	Collins
1) Civil Justice Committee		Shaddock	Bond
2) Health & Families Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

This bill amends the statutes relating to child protection, to conform to those provisions of the federal Adoption and Safe Families Act (ASFA) in three major areas. These areas are reasonable efforts, case planning, and permanency. These changes are to ensure that Florida continues to receive federal funds under the ASFA.

Concerning reasonable efforts, the bill amends current law to describe when reasonable efforts are required, and provide the nature of reasonable efforts required regarding both parental and relative placements at each stage of dependency proceedings.

With regard to case planning, the bill amends current law to:

- Provide that agreeing to a case plan does not constitute an admission of wrongdoing or consent to a finding of dependency;
- Recognize the role of mediation and family conferencing in the development of case plans;
- Define "concurrent case planning" and provide direction for its use;
- Replace language relating to "extending the case plan" with clear direction as to the time frames and requirements for permanency hearings;
- Provide options available to the court when it is clear that a case plan cannot be completed within the first 12 months that a child is in care;
- Provide new emphasis on current language that "time is of the essence" in case planning; and
- Provide the considerations and the process to be used in amending a case plan.

Finally, with regard to permanency, the bill amends current law to define "permanency hearings," "permanency plan," and "permanency goal;" and conform the permanency options to those contained in federal law.

The Department of Children and Family Services' fiscal analysis suggests the passage of this bill will save Florida just under $1 million in penalties from the federal government for lack of consistency with federal laws and regulations. This bill does not appear to have a fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- The Department of Children and Family Services is required to adopt rules to:

- Make available to all physical custodians and family services counselors the information required by s. 39.6012(2), F.S. and for ensuring that this information follows the child until permanency has been achieved; and

- Ensure that the federal Indian Child Welfare Act and the Multi-Ethnic Placement Act of 1994 are implemented.

Empower families -- The bill will reduce delays in achieving permanency for children and includes families to a greater degree in the case planning process.

B. EFFECT OF PROPOSED CHANGES:

Background

Florida laws relating to child welfare issues were enacted long before federal intervention. The responsibility and authority to intervene in situations where a child is or appears to be in need of protection as a result of child abuse or neglect has traditionally been at the state rather than federal level.[1] However, beginning with the passage of the Child Abuse Prevention and Treatment Act (CAPTA) in 1974, Congress has enacted a number of laws having a significant effect on state child protection and child welfare services.[2]

The major federal laws impacting Florida's child protection system, listed in order of original enactment, are: CAPTA,[3] the Indian Child Welfare Act (ICWA),[4] the Adoption Assistance and Child Welfare Act,[5] the Family Preservation and Family Support Services Program (established as part of the Omnibus Reconciliation Act of 1993),[6] the Multi-Ethnic Placement Act (MEPA),[7] the Adoption and Safe Families Act (ASFA),[8] the Foster Care Independence Act,[9] the Child Abuse Prevention and Enforcement Act,[10] the Intercountry Adoption Act,[11] the Promoting Safe and Stable Families Amendments,[12] and the Keeping Children and Families Safe Act.[13]

The ASFA of 1997, which amends the 1980 Child Welfare Act, was signed into law on November 19, 1997. This law provides that the health and safety of children served by child welfare agencies must be the paramount concern of those agencies. It emphasizes moving children in foster care more quickly into permanent homes.[14] Its implementing regulations[15] became effective on March 27, 2000. These

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[1] National Clearinghouse on Child Abuse and Neglect Information, http://nccanch.acf.hhs.gov (August 1, 2005).
[2] *Id.*
[3] P.L. 93-247, amended P.L. 95-266, 98-257, 100-294, 102-295, 104-235.
[4] P.L. 95-608.
[5] P.L. 98-272.
[6] P.L. 103-66.
[7] P.L. 103-382, amended P.L. 104-188.
[8] P.L. 105-89.
[9] P.L. 106-169.
[10] P.L. 106-177.
[11] P.L. 106-279.
[12] P.L. 107-133.
[13] P.L. 108-36.
[14] *Adoption and Safe Families Act of 1997 (H.R. 867)* National Association of Social Workers (December 1997), found at

regulations incorporate provisions of ASFA and MEPA and amend pre-existing regulations by adding new requirements for state compliance with Titles IV-B and IV-E of the Social Security Act.[16]

State and local child protection agencies that accept federal funds pursuant to Titles IV-B and IV-E of the Social Security Act are required to follow ASFA and its regulations. In FY 2004-2005, the last year for which figures are available, Florida received $29,873,959 in federal funds pursuant to Title IV-B and $190,309,299 in federal funds pursuant to Title IV-E of the Social Security Act. In that year, these sums amounted to 23.61 percent of the total budget for Florida's child welfare programs, a percentage which remains fairly consistent.[17]

As a prerequisite to accepting federal funding through Titles IV-B and IV-E of the Social Security Act, states were required to amend state legislation to bring it into compliance with ASFA. However, the short deadlines for compliance[18] required states to draft legislation quickly, increasing the likelihood that inconsistencies would remain between state law and ASFA requirements. Further, since the required date for drafting statutory changes was earlier than the date of the issuance of the final ASFA regulations (January 25, 2000), the likelihood of inconsistencies between state and federal law was even further increased.

During the 1998 session, the Florida Legislature enacted significant changes to Florida's child protection statute, in part with the goal of bringing state law into compliance with ASFA.[19] The ASFA-related changes included:

- Recognizing the parents' right to counsel at the shelter and subsequent hearings and the right, if indigent, to appointed counsel;
- Providing for access by the Department of Children and Family Services ("DCFS" or the "department") to federal and state parent locator services for diligent search activities;
- Increasing requirements for documentation in cases where the case plan goal is not reunification;
- Reducing the time period from 18 to 12 months for judicial review of permanency options for a child;
- Requiring judicial reviews for all children in out-of-home care every six months; and
- Authorizing but not requiring the use of concurrent case planning. Concurrent case planning is the practice of establishing a permanency goal in a case plan which uses reasonable efforts to reunify the child with the parent, while at the same time establishing an alternative or back-up permanency plan to be implemented if children cannot safely return to their biological parents.[20] If concurrent case planning is not used, the alternative goal is explored only after the court determines that reunification is no longer a viable permanency option for the child, a process that almost inevitably significantly delays permanence for the child.

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http://www.naswdc.org/archives/advocacy/updates/1997/safeadop.htm.

[15] 45 CFR ss. 1355, 1356, 1357; see also the introductory materials and comments, found at 65 FR 4020-4075.

[16] *Making Sense of the ASFA Regulations*, Baker, Debra Ratterman et al, American Bar Association (2001), p. 4.

[17] Information obtained from O. Roy Hutcheson, Jr., Chief, Federal Program Eligibility-Revenue Maximization Unit, Child Welfare/CBC Program Office, DCF, August 15, 2005.

[18] P.L. 105-89, s. 103(a)(3).

[19] Ch. 98-403, L.O.F.

[20] *Tools for Permanency: Tool #1: Concurrent Permanency Planning*, National Resource Center for Foster Care and Permanency Planning, Hunter College School of Social Work of the City University of New York, found at www.hunter.curry.edu/socwork/nrcfcpp (July 2005).

The remaining major provisions of ASFA which have not been addressed in state law may be described as:

- "Reasonable efforts" – ASFA redefines "reasonable efforts" to emphasize children's health and safety. It describes at least three circumstances when "reasonable efforts" are required by the state agency in child welfare cases: to prevent foster care placement, to finalize a permanency plan for each child, and to reunify families if such placement has occurred. It also describes situations when reasonable efforts to preserve families are not required;

- Case plan and review requirements – ASFA requires that the case plan and associated reviews specifically address child safety and permanency; and

- Increased emphasis on timely permanency decision making, including shorter time periods (shortened from 18 months to 12 months) to finalize a permanency plan, a new requirement for permanency hearings, and a limitation on the time period for reunification services to families.[21]

These three major provisions of ASFA were, for the most part, not addressed in the 1998 legislation. Consequently, Florida law on these issues contains pre-ASFA provisions which are not consistent with current federal law.

Occurring simultaneously with the implementation of the ASFA-related changes, Florida's child welfare system has undertaken the transition from a traditional agency-driven structure to one in which child welfare services are delivered by community-based care lead agencies. These community-based care lead agencies are independent, non-profit organizations under contract with DCF to provide child welfare services. There are currently 22 lead agencies, each with several subcontracting agencies. This decentralization of service delivery has created additional opportunity for confusion as to the requirements of federal and state law in this area.

When state and federal law are not consistent, the Supremacy Clause of the U.S. Constitution requires state courts to apply federal law.[22] However, since most practitioners and decision makers in the Florida child welfare system are more familiar with Florida law than with federal law. The inconsistencies may not be recognized at the court or agency level and may result in failures to comply with federal law which are detected when state practices are reviewed as part of the federal Child and Family Services Review (CFSR) process. Such a failure may lead to the loss of significant federal financial support for Florida's child welfare program.

Effect of Bill

Section 1 Definitions

The bill creates new definitions of the terms "concurrent planning," "family team conference," "permanency goal," "permanency plan," "permanent guardian," and "permanent guardianship of a dependent child." Current definitions are also amended and or deleted to reflect provisions of the bill.

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[21] See *Congress Passes Major new Adoption/Foster Care Reform Law*, ABA Center on Children and the Law, found at http://www.abanet.org/child/adofost.html.

[22] *Hilton v. South Carolina Public Railways Comm'n,* 502 U.S. 197 (1991); *Mississippi Power & Light Co. v. Mississippi,* 487 U.S. 354 (1988); *Kalb v. Feuerstein,* 308 U.S. 433 (1940).

Section 2 Rulemaking Authority

The bill grants authority to the DCFS to adopt rules to make available to all physical custodians and family services counselors the information in the case plan and to ensure that this information follows the child until permanency has been achieved.

Section 3 Procedures and Jurisdiction

The bill amends s. 39.013, F.S., to remove provisions relating to time limitations in dependency cases. (These provisions are re-enacted and emphasized in section 4 of the bill.)

Section 4 Time Limitations

The bill removes current provisions relating to time limitations in dependency cases and creates a new section that provides for added emphasis on that fact that time is of the essence for establishing permanency for a child in the dependency system. The bill also outlines the time limitations applicable to dependency cases.

Section 5 Federal Law

The bill provides that ch. 39, F.S., does not supersede the requirements of the ICWA, MEPA, or their implementing regulations and encourages the DCFS to enter into agreements with recognized American Indian tribes.

Section 6 Requirements for Placement of Children; Exemptions

The bill creates a new section to describe the background screening requirements for the out-of-home placement of children and the procedures for seeking review of the department's denial of placement of a child based on a disqualifying criminal offense.

Specifically, the bill provides DCFS may conduct a criminal records checks on any person being considered for placement of a child. Approval for placement with any person other than a parent may not be granted in any case in which a criminal records check reveals a felony conviction in a court for:

- Child abuse, abandonment, or neglect; spousal abuse; a crime against children, including child pornography, or a crime involving violence, including sexual battery, sexual assault, or homicide, but not including other physical assault or battery, if the felony was committed at any time; or

- Physical assault, battery, or a drug-related offense if the felony was committed within the past 5 years.

DCFS may place a child in a home that otherwise meets placement requirements if state and local criminal records checks do not disqualify the applicant and if DCFS has submitted fingerprint information to the Department of Law Enforcement for forwarding to the Federal Bureau of Investigation and is awaiting the results of the federal criminal records check.

Persons with whom placement of a child is being considered must disclose to DCFS any prior or pending local, state, or federal criminal proceedings in which they are or have been involved. The results of any criminal records check of a parent conducted under this section must be considered in determining whether placement with the parent will jeopardize the safety of the child being placed.

The court may review the decision of the department to grant or deny an exemption. The court must prepare written findings to support its decision in this matter. A person seeking placement of a child, but has been denied by DCFS has the burden of setting forth sufficient evidence of rehabilitation.

Section 7 Mandatory Reports of Child Abuse

The bill provides that the duty to report to the central abuse hotline includes the reasonable suspicion that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care. The hotline is authorized to accept such reports. The bill also adds a child who is known or suspected to be a victim of human trafficking to the list of offenses defined as "criminal conduct" that DCFS is to immediately forward to a law enforcement agency.

Section 8 Initiation of Protective Investigations

The bill amends s. 39.301, F.S., to allow previous reports of child abuse, neglect, or abandonment to be considered in determining whether a child is safe and the risk to a child at any stage of a child protection proceeding. The bill requires parents or legal custodians to notify the protective investigator of any change in the location or residence of a child while an investigation is open, and to clarify that this notification can serve as the basis for a missing child report to law enforcement.

Section 9 Child Protective Teams

The bill amends s. 39.303, F.S., to authorize the Child Protection Teams of the Department of Health to provide assessment and support in any report alleging sexual abuse of a child.

Section 10 Placement in Shelter

The bill amends ss. 39.402(10) and (16), F.S., to require that the order at the shelter[23] hearing include a description of the specific services which could prevent or eliminate the need for the removal of a child and the date the services are expected to become available or an explanation of why the services are not available.

This section requires that the order contain a notice to all parties of the date, time, and place of the case plan conference, family team conference, or mediation that will be used to develop the case plan. The bill also requires the court to inquire, and the parents to provide, the names and location information of all relatives whom they wish to be considered for placement of the child. The bill requires the court to advise the parents that their parental rights may be terminated if the parents fail to substantially comply with their case plan.

Section 11 Adjudicatory Hearings

The bill amends s. 39.507, F.S., to require that, when a court adjudicates a child dependent and the child is in out-of-home care, the court must inquire, and the parents provide, the names and location information of all relatives whom they wish to be considered for placement of the child. Further, the bill requires the court to advise the parents that their parental rights may be terminated if the parents fail to substantially comply with their case plan.

Section 12 Relative Caregiver Program

The bill provides that children who are in a permanent guardianship with a relative are eligible for the relative caregiver program.

[23] Section 39.01(64), F.S., provides that a "shelter" is a placement with a relative or a nonrelative, or in a licensed home or facility, for the temporary care of a child who is alleged to be or who has been found to be dependent, pending court disposition before or after adjudication.

Section 13 Disposition Hearings

The bill amends s. 39.521, F.S., to remove the limitation on considering placement of a child with an adult relative at a later date when no suitable relative is earlier identified.

Section 14 Postdisposition Change of Custody

The bill requires that the court consider the continuity of the child's placement in the same out-of-home residence as a factor in determining the best interests of a child when a petition is filed to change the custody of a child in an out-of-home placement.

Section 15 Case Plan Development

The bill creates new sections of ch. 39, F.S., describing the procedural and other requirements for developing a case plan, describing the tasks and services that must be addressed in a case plan and describing the process and grounds for case plan amendments. The DCFS must develop a case plan in conjunction with the child's parents, any court-appointed guardian ad litem, and if appropriate the temporary custodian of the child.

The parent of the child may receive assistance in preparing the case plan, and the parent must be informed of his/her right to assistance from counsel. Should a parent not participate in the preparation of a case plan, DCFS must document that and prepare a case plan without the parent's assistance. A parent may then petition the court for review of the provision(s) of the case plan with which he/she disagrees.

A case plan must include the following information: a description of the problem being addressed; the permanency goal; a description of the reunification goal (if that is applicable); the date compliance expires (the compliance period expires no later than 12 months after the date the child was initially removed from the home or the date the case plan was approved by the court); and a written notice to the parent that failure to comply with the plan may result in the termination of parental rights sooner than the compliance period.

A case plan should be signed by all the parties, yet the parent's failure to sign does not preclude a court from accepting the case plan. The case plan must describe the role of the foster parents or legal custodians, the minimum number of face-to-face meetings to be held each month between the parents and DCFS's family services counselors, and the parent's responsibility for financial support of the child.

When adoption is the ultimate goal for the child, the case plan must include documentation of the steps to locate an adoptive family.

Once a case plan has been developed, DCFS must provide the following procedural requirements.

- If the case plan requires the department to provide services to the parents or the child and the parents agree to begin compliance with the case plan before the case plan's acceptance by the court, the department must make the appropriate referrals for services that will allow the parents to immediately begin the agreed upon tasks and services.

- After the case plan has been agreed upon and signed by the parties, a copy of the plan must immediately be given to the parties, including the child, if appropriate, and to other persons as directed by the court.

Section 16 Case Plan Tasks

The bill describes the tasks and services which must be addressed in a case plan. The services described in the case plan must be designed to improve the conditions in the home and aid in maintaining the child in the home, facilitate the child's safe return to the home, ensure proper care of

the child, or facilitate the child's permanent placement. The services offered must be the least intrusive possible into the life of the parent and child, must focus on clearly defined objectives, and must provide the most efficient path to quick reunification or permanent placement.

The case plan must describe each of the tasks with which the parent must comply and the services to be provided to the parent, specifically addressing the identified problem. Should the child be in an out-of-home placement, the case plan must include additional specific information.

Section 17 Case Plan Amendments

The bill describes the process and grounds for case plan amendments. Once a case plan has been developed these provisions would be the only method of amending that plan. However, the case plan may be amended at any time in order to change the goal of the plan, employ the use of concurrent planning, add or remove tasks the parent must complete to substantially comply with the plan, provide appropriate services for the child, and update the child's health, mental health, and education records.

The case plan may also be amended:

- By the court when all parties are in agreement regarding the amendments and the amended plan is signed by all parties and submitted to the court with a memorandum of explanation.
- To change the goal of the plan, employ the use of concurrent planning, or add or remove tasks the parent must complete in order to substantially comply with the plan if there is a preponderance of evidence demonstrating the need for the amendment.
- To provide appropriate services to the child if there is competent evidence demonstrating the need for the amendment.

Section 18 Court Approval of Case Plan

The bill amends s. 39.603, F.S., to make technical and conforming changes, and provides that all case plans and amendments must be approved by the court.

Section 19 Permanency Determination by the Court

The bill amends s. 39.621, F.S., to provide that time is of the essence for permanency of children in the dependency system and to provide direction to the court in conducting permanency hearings for children. Further the bill provides that the best interest of the child is the primary consideration of the permanency goal for the child.

The bill also specifies the provisions of the permanency options of permanent guardianship of a dependent child, permanent placement with a fit and willing relative, and another planned permanent living arrangement.

Sections 20-22 Newly Created Permanency Options

This bill creates three new permanency options for children in the dependency system. While these new options are deemed lower priority than either reunification or adoption, they are nonetheless intended to be permanent. These permanency options, discussed in the sections below, differ from an adoption. A few of those differences are: the permanency options do not authorize any rights of inheritance for the child; absent a termination of parental rights, the permanency options do not exclude the possibility of parental reunification; and the court has continuing oversight in all of the permanency placement options.

Section 20 Permanent Guardianship of a Dependant Child

The bill describes the permanency options of permanent guardianship of a dependent child, and conforms this permanency option to the option described in federal law. If a court determines that reunification or adoption is not in the best interest of the child, the court may place the child in a permanent guardianship with a relative or other adult approved by the court.

Placement of a child in a permanent guardianship does not terminate the parent-child relationship. Nor does the placement preclude the right of the child to inherit from his or her parents, the parents' right to consent to the child's adoption, or the parents' responsibility to provide financial, medical, and other support for the child as ordered by the court.

Section 21 Permanent Placement with Fit and Willing Relative

The bill describes the permanency options of permanent placement with a fit and willing relative and conforms this permanency option to that described in federal law.

The bill provides for permanent placement of a child with a fit and willing relative. Such a placement can occur when: the child has been in the placement for at least the preceding 6 months; the relative has made a commitment to provide for the child until the child reaches the age of majority and to prepare the child for adulthood and independence; the relative is suitable and able to provide a safe and permanent home for the child; and the relative agrees to give notice of any change in his or her residence or the residence of the child.

The court must give that relative an order establishing his or her authority to care for the child, and DCFS must continue to supervise the placement with the relative until further court order.

Section 22 Another Planned Permanent Living Arrangement

The bill describes the permanency options of permanent placement with another planned permanent living arrangement and conforms this permanency option to the options described in federal law.

If a court finds that reunification is not in the best interest of a child, the court may approve placement of the child in another planned permanent living arrangement. The placement in such arrangement may occur if: the court finds a more permanent placement, such as adoption, permanent guardianship, or placement with a fit and willing relative, is not in the best interest of the child; DCFS has documented reasons the placement will endure and how the proposed arrangement will be more stable and secure than ordinary foster care; the court finds that the health, safety, and well-being of the child will not be jeopardized by such an arrangement; and there are compelling reasons to show that another placement is the most appropriate permanency goal.

Section 23 Judicial Review

The bill amends s. 39.701, F.S., to revise requirements for contents of social studies reports prepared by social service agencies and submitted for periodic review by the court. The proposed language would require reports to include copies of the child's current health and education records as identified in new s. 39.6012., F.S.

Also, considerations for the court or citizen review panel conducting a periodic review (every six months or more frequently if required) are revised to incorporate the provisions of this bill. The current requirement, that the court review the child's permanency goal at the judicial review held no later than 12 months after the child is placed in shelter care, is revised to require review after six months. If the court makes a written finding that it is not likely that the child will be reunified within 12 month, the department must file a motion for concurrent planning[24] for the child.

[24] "Concurrent planning" means "establishing a permanency goal in a case plan that uses reasonable efforts to reunify the child with the parent, while at the same time establishing another goal," such as adoption or permanent guardianship/placement. New definition from this bill.

Section 24 Initiation of Termination of Parental Rights Proceedings; Judicial Review

The bill amends s. 39.703, F.S., to provide the circumstances under which DCFS is required to file or is excused from filing a termination of parental rights petition at the time of the 12-month judicial review. It provides authority for the court to review DCFS's decision not to file this petition on motion of any party or its own motion.

Section 25 Grounds for Termination of Parental Rights

The bill amends s. 39.806, F.S., to provide that a material breach of the case plan is grounds for filing a termination of parental rights petition before the expiration of the time period for compliance with the case plan if the court finds by clear and convincing evidence that the parent is unlikely or unable to substantially comply with the case plan before the time for compliance expires.

Section 26 Manifest Best Interests of the Child

The bill amends s. 39.810, F.S., to provide that, in determining the manifest best interests of a child in the context of a termination of parental rights proceeding, the availability of a non-adoptive relative placement may not be considered as a factor weighing against the termination of parental rights. Also, if a child has been in a stable or pre-adoptive placement for not less than six months, the availability of a different placement, including a placement with relative, may not be considered as a ground to deny the petition for termination of parental rights.

Section 31 Petition for Termination of Parental Rights; Filing; Elements

The bill re-enacts s. 39.802(5), F.S., to incorporate the revisions in the bill.

Section 35 Site Selection of Community Residential Homes

The bill repeals ss. 39.601, 39.622, 39.623, 39.624, and 435.045, F.S., relating to case requirements, long-term custody of a dependent child, long-term licensed custody of a dependant child, independent living, and background screening of certain persons before a dependent child is placed in their home.

Miscellaneous Sections

Sections 27-30 and 32-34 amend ss. 39.811, 39.0015, 39.205, 39.302, 39.828, 63.092, and 419.001 F.S., to make technical and conforming changes and to update cross-references.

C. SECTION DIRECTORY:

Section 1 amends s. 39.01, F.S., relating to definitions.

Section 2 amends s. 39.0121, F.S., relating to rulemaking authority.

Section 3 amends s. 39.013, F.S., related to procedures and right to counsel for parents in dependency proceedings.

Section 4 creates s. 39.0136, F.S., relating to time limitations and continuances.

Section 5 creates s. 39.0137, F.S., relating to federal law and rulemaking authority.

Section 6 creates s. 39.0138, F.S., relating to requirements for placement of children and exemptions from disqualification.

Section 7 amends s. 39.201, F.S., relating to the central abuse hotline and mandatory reports of abuse, neglect, abandonment, and death.

Section 8 amends s. 39.301, F.S., relating to child protective investigations.

Section 9 amends s. 39.303, F.S., relating to child protection teams.

Section 10 amends s. 39.402, F.S., relating to placement in a shelter.

Section 11 amends s. 39.507, F.S., relating to adjudicatory hearings and orders of adjudication.

Section 12 amends s. 39.5085, F.S., relating to the Relative Caregiver Program.

Section 13 amends s. 39.521, F.S., relating to disposition hearings and powers of disposition.

Section 14 amends s. 39.522, F.S., relating to postdisposition change of custody.

Section 15 creates s. 39.6011, F.S., relating to case plan development.

Section 16 creates s. 39.6012, F.S., relating to case plan tasks and services to be provided.

Section 17 creates s. 39.6013, F.S., relating to amendments to a case plan.

Section 18 amends s. 39.603, F.S., relating to court approval of case planning.

Section 19 amends s. 39.621, F.S., relating to permanency determinations by the court.

Section 20 creates s. 39.6221, F.S., relating to the permanent guardianship of a child.

Section 21 creates s. 39.6231, F.S., relating to permanent placement of a child with a fit and willing relative.

Section 22 creates s. 39.6241, F.S., relating to another planned permanent living arrangement.

Section 23 amends s. 39.701, F.S., relating to judicial review.

Section 24 amends s. 39.703, F.S., relating to the initiation of termination of parental rights proceedings and judicial review.

Section 25 amends s. 39.806, F.S., relating to grounds for termination of parental rights.

Section 26 amends s. 39.810, F.S., relating to manifest best interest of the child.

Section 27 amends s. 39.811, F.S., relating to powers and orders of disposition.

Section 28 amends s. 39.0015, F.S., relating to child abuse prevention training in the district school system.

Section 29 amends 39.205, F.S., relating to penalties relating to the reporting of abuse, abandonment, or neglect.

Section 30 amends s. 39.302, F.S., relating to protective investigations of institutional child abuse, abandonment, or neglect.

Section 31 amends s. 39.802, F.S., relating to petitions for termination of parental rights.

Section 32 amends s. 39.828, F.S. relating to the appointment of a guardian advocate for drug dependent newborns.

Section 33 amends s. 63.092, F.S., relating to reports to the court of intended placement by an adoption entity, at-risk placements, and preliminary studies.

Section 34 amends s. 409.165, F.S., relating to alternative care for children.

Section 35 amends s. 419.001, F.S., relating to site selection of community residential homes.

Section 36 repeals ss. 39.601, 39.622, 39.623, 39.624, and 435.045, F.S.

Section 37 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Unknown.

2. Expenditures:

   Unknown.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Children and Family Services' fiscal analysis suggests the passage of this bill will save Florida just under $1 million in penalties from the federal government for lack of consistency with federal laws and regulations. However, the department does not anticipate any fiscal impact associated with the implementation of this bill.

The bill removes areas of confusion that have led to delay in permanency for children. As a result, more children should achieve permanency at an earlier time, reducing the need for foster care services.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Department of Children and Family Services is required to adopt rules to:

- Make available to all physical custodians and family services counselors the information required by s. 39.6012(2), F.S. and for ensuring that this information follows the child until permanency has been achieved; and

- Ensure that the federal Indian Child Welfare Act and the Multi-Ethnic Placement Act of 1994 are implemented.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The provisions in this bill regarding criminal history screening of prospective placements appear confusing. (Lines 1104-1148). For instance, the provisions refer to physical assault which could be a misdemeanor, s. 784.011, F.S, and to sexual assault which would appear to be more properly defined as sexual battery under s. 794.011, F.S. The provisions also imply, but do not specifically provide, that DCFS may waive prior convictions in certain circumstances.

The bill attempts to bring Florida law into compliance with federal laws and regulations. Nevertheless, not all of the provisions of the Code of Federal Regulations pertaining to Title IV-E foster care programs have been implemented. For instance the bill does not include provisions of 45 C.F.R. s. 1356.21 pertaining to foster care maintenance payments program implementation requirements. Specifically, the bill does not include: trial home visits, 45 C.F.R. s. 1356.21(e); the provisions the state filing a petition to terminate the parental rights of a foster child who has been the responsibility of the state for 15 of the last 22 months, 45 C.F.R. s. 1356.21(i)(1)(i); the provisions the state filing a petition to terminate the parental rights of a parent who has been convicted of an enumerated felony, 45 C.F.R. s. 1356.21(i)(1)(iii); the provisions related to the removal of a child from the home of a specified relative, 45 C.F.R. s. 1356.21(k),; or the provisions related to the review of payments and licensing standards, 45 C.F.R. s. 1356.21(m).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

A bill to be entitled

An act relating to child protective services; amending s. 39.01, F.S.; revising definitions relating to child protective services; amending s. 39.0121, F.S.; providing rulemaking authority to the Department of Children and Family Services to provide certain information in a child's case plan to physical custodians and family services counselors under certain circumstances; amending s. 39.013, F.S.; removing provisions relating to continuances; creating s. 39.0136, F.S.; providing for time limitations and circumstances under which a continuance may be granted in child protective cases; providing exceptions; creating s. 39.0137, F.S.; providing that state laws do not supersede certain federal laws; requiring the Department of Children and Family Services to adopt rules; creating s. 39.0138, F.S.; authorizing the department to conduct criminal records checks of persons being considered as prospective foster parents; providing that a court may review the granting or denial of an exemption from disqualification to care for a dependent child; providing that a person seeking placement of a child who is disqualified bears the burden of providing evidence of rehabilitation; amending s. 39.201, F.S.; requiring that any person who knows or suspects that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care must report this information to the central abuse

hotline of the Department of Children and Family Services; amending s. 39.301, F.S.; redefining the term "criminal conduct" to include a child who is known or suspected to be a victim of human trafficking; requiring each child protective investigator to inform the person who is the subject of a child protective investigation that he or she has a duty to report any change in the residence or location of the child to the investigator and that the duty to report continues until the investigation is closed; providing that the department may rely upon a previous report to indicate that child abuse has occurred; providing that if the child has moved to a different residence or location, a report may be filed with a law enforcement agency under certain circumstances; amending 39.303, F.S.; conforming provisions to changes made by the act; amending s. 39.402, F.S.; requiring that a shelter hearing order contain specified information relating to the availability of services to prevent removal from the home; requiring notification of certain parties regarding case plan or family team conferences or mediation; providing a timeframe for the conference or mediation; requiring a parent to provide certain information regarding relatives with whom a child may be placed under certain circumstances; providing circumstances under which parental rights may be terminated and the child's out-of-home placement may become permanent; amending s. 39.507, F.S.; requiring the court to inquire of the parents whether the parents have relatives who might be considered

as a placement for the child; directing the court to advise the parents that, if the child is not returned to their custody within 12 months, their parental rights may be terminated and the child's out-of-home placement may become permanent; amending s. 39.5085, F.S.; conforming provisions to changes made by the act; correcting cross-references; amending s. 39.521, F.S.; revising the content of an order of disposition issued by the court; amending s. 39.522, F.S.; requiring the court to consider the continuity of the child's placement in the same out-of-home residence as a factor when determining the best interest of the child in a postdisposition proceeding to modify custody; creating s. 39.6011, F.S.; providing procedures for drafting and implementing a case plan; requiring certain face-to-face meetings; specifying contents of a case plan; requiring the department to prepare a case plan for each child receiving services from the department; requiring all parties, except the child under certain circumstances, to sign the case plan; requiring the case plan to provide certain documentation when the permanency goal for the child is adoption; requiring the department to follow certain procedures; requiring the case plan to be filed with the court and copies to be provided to all parties; requiring certain information to follow a child until permanency is achieved; creating s. 39.6012, F.S.; providing for case plan tasks and services; requiring a parent to complete certain tasks in order to receive certain services;

providing for the content of case plans; creating s. 39.6013, F.S.; providing for amendments to a case plan; describing the circumstances under which a case plan may be modified; requiring certain information to be included in amendments to a case plan; requiring copies to be distributed to specified parties; amending s. 39.603, F.S.; requiring that case plans and amendments be approved by the court and that copies of the amended plan be provided to certain parties; amending s. 39.621, F.S.; providing a legislative finding; requiring a permanency hearing to be held within a specified timeframe; specifying permanency goals; providing prehearing procedures; directing the court to make certain findings at the permanency hearing; requiring certain factors to be considered by the court in determining the permanency goal for the child; permitting parents to make a motion for reunification or increased contact under certain circumstances; creating s. 39.6221, F.S.; providing for the permanent guardianship for a dependent child; authorizing the court to consider a permanent guardian as a long-term option for a dependent child; requiring a written order; providing for the contents of the permanent guardianship order; exempting the permanent guardianship of a child from the requirements of ch. 744, F.S., under certain circumstances; providing for the court to retain jurisdiction; providing that placement in permanent guardianship does not terminate the relationship between the parent and the child; creating s. 39.6231, F.S.;

providing circumstances for placement of a child with a fit and willing relative; requiring the court to specify the reasons to place a child with a relative; requiring the court to establish the relative's authority to care for the child; providing for the department to supervise the placement for a specified time period; requiring the court to continue to conduct permanency hearings; creating s. 39.6241, F.S.; authorizing the court to place a child in another planned permanent living arrangement under certain circumstances; requiring the department and guardian ad litem to provide the court with certain information regarding the needs of the child; amending s. 39.701, F.S.; requiring that a child's current health, mental health, and education records be included in the documentation for the judicial review report; authorizing the court and citizen review panel to make certain determinations; providing for amendments to a case plan; removing a provision relating to the extension of a time limitation or the modification of terms of a case plan; requiring the court to conduct a judicial review 6 months after the child is placed in shelter care; amending s. 39.703, F.S.; providing when the department may file a petition for termination of parental rights; providing circumstances under which the department may choose not to file a petition; providing for court review of a determination by the department not to file a petition; amending s. 39.806, F.S.; authorizing a material breach of the case plan as a ground to terminate parental rights;

requiring that the department show, and the court find, the material breach by clear and convincing evidence; amending s. 39.810, F.S.; providing certain factors for the court to consider for the best interest of the child; amending ss. 39.811 and 409.165, F.S.; conforming provisions to changes made by the act; amending ss. 39.0015, 39.205, 39.302, 39.828, 63.092, and 419.001, F.S.; correcting cross-references; reenacting s. 39.802(5), F.S., relating to the filing of a petition to terminate parental rights, to incorporate the amendments made to s. 39.806, F.S., in a reference thereto; repealing ss. 39.601, 39.622, 39.623, 39.624, and 435.045, F.S., relating to case plan requirements, long-term custody of a dependent child, long-term licensed custody of a dependent child, independent living, and background screening of certain persons before a dependent child is placed in their home; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 39.01, Florida Statutes, is amended to read:

39.01 Definitions.--When used in this chapter, unless the context otherwise requires:

(1) "Abandoned" means a situation in which the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the caregiver responsible for the child's welfare, while being able, makes no provision for the child's

support and makes no effort to communicate with the child, which situation is sufficient to evince a willful rejection of parental obligations. If the efforts of the ~~such~~ parent or legal custodian, or caregiver primarily responsible for the child's welfare, to support and communicate with the child are, in the opinion of the court, only marginal efforts that do not evince a settled purpose to assume all parental duties, the court may declare the child to be abandoned. The term "abandoned" does not include an abandoned newborn infant as described in s. 383.50, a "child in need of services" as defined in chapter 984, or a "family in need of services" as defined in chapter 984. The incarceration of a parent, legal custodian, or caregiver responsible for a child's welfare may support a finding of abandonment.

(2) "Abuse" means any willful act or threatened act that results in any physical, mental, or sexual injury or harm that causes or is likely to cause the child's physical, mental, or emotional health to be significantly impaired. Abuse of a child includes acts or omissions. Corporal discipline of a child by a parent or legal custodian for disciplinary purposes does not in itself constitute abuse when it does not result in harm to the child.

(3) "Addictions receiving facility" means a substance abuse service provider as defined in chapter 397.

(4) "Adjudicatory hearing" means a hearing for the court to determine whether or not the facts support the allegations stated in the petition in dependency cases or in termination of parental rights cases.

(5) "Adult" means any natural person other than a child.

(6) "Adoption" means the act of creating the legal relationship between parent and child where it did not exist, thereby declaring the child to be legally the child of the adoptive parents and their heir at law, and entitled to all the rights and privileges and subject to all the obligations of a child born to the ~~such~~ adoptive parents in lawful wedlock.

(7) "Alleged juvenile sexual offender" means:

(a) A child 12 years of age or younger who is alleged to have committed a violation of chapter 794, chapter 796, chapter 800, s. 827.071, or s. 847.0133; or

(b) A child who is alleged to have committed any violation of law or delinquent act involving juvenile sexual abuse. "Juvenile sexual abuse" means any sexual behavior which occurs without consent, without equality, or as a result of coercion. For purposes of this paragraph, the following definitions apply:

1. "Coercion" means the exploitation of authority or the use of bribes, threats of force, or intimidation to gain cooperation or compliance.

2. "Equality" means two participants operating with the same level of power in a relationship, neither being controlled nor coerced by the other.

3. "Consent" means an agreement, including all of the following:

a. Understanding what is proposed based on age, maturity, developmental level, functioning, and experience.

b. Knowledge of societal standards for what is being proposed.

c. Awareness of potential consequences and alternatives.

d. Assumption that agreement or disagreement will be accepted equally.

e. Voluntary decision.

f. Mental competence.

Juvenile sexual offender behavior ranges from noncontact sexual behavior such as making obscene phone calls, exhibitionism, voyeurism, and the showing or taking of lewd photographs to varying degrees of direct sexual contact, such as frottage, fondling, digital penetration, rape, fellatio, sodomy, and various other sexually aggressive acts.

(8) "Arbitration" means a process whereby a neutral third person or panel, called an arbitrator or an arbitration panel, considers the facts and arguments presented by the parties and renders a decision which may be binding or nonbinding.

(9) "Authorized agent" or "designee" of the department means an employee, volunteer, or other person or agency determined by the state to be eligible for state-funded risk management coverage, which ~~that~~ is assigned or designated by the department to perform duties or exercise powers under ~~pursuant to~~ this chapter.

(10) "Caregiver" means the parent, legal custodian, permanent guardian, adult household member, or other person responsible for a child's welfare as defined in subsection (46) ~~(47)~~.

(11) "Case plan" ~~or "plan"~~ means a document, as described in s. 39.6011 ~~s. 39.601~~, prepared by the department with input

from all parties. The case plan follows the child from the provision of voluntary services through any dependency, foster care, or termination of parental rights proceeding or related activity or process.

(12) "Child" or "youth" means any unmarried person under the age of 18 years who has not been emancipated by order of the court.

(13) "Child protection team" means a team of professionals established by the Department of Health to receive referrals from the protective investigators and protective supervision staff of the department and to provide specialized and supportive services to the program in processing child abuse, abandonment, or neglect cases. A child protection team shall provide consultation to other programs of the department and other persons regarding child abuse, abandonment, or neglect cases.

(14) "Child who is found to be dependent" means a child who, pursuant to this chapter, is found by the court:

(a) To have been abandoned, abused, or neglected by the child's parent or parents or legal custodians;

(b) To have been surrendered to the department, the former Department of Health and Rehabilitative Services, or a licensed child-placing agency for purpose of adoption;

(c) To have been voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, an adult relative, the department, or the former Department of Health and Rehabilitative Services, after which placement, under the requirements of this chapter, a case plan has expired and the

parent or parents or legal custodians have failed to substantially comply with the requirements of the plan;

(d) To have been voluntarily placed with a licensed child-placing agency for the purposes of subsequent adoption, and a parent or parents have signed a consent pursuant to the Florida Rules of Juvenile Procedure;

(e) To have no parent or legal custodians capable of providing supervision and care; or

(f) To be at substantial risk of imminent abuse, abandonment, or neglect by the parent or parents or legal custodians.

(15) "Child support" means a court-ordered obligation, enforced under chapter 61 and ss. 409.2551-409.2597, for monetary support for the care, maintenance, training, and education of a child.

(16) "Circuit" means any of the 20 judicial circuits as set forth in s. 26.021.

(17) "Comprehensive assessment" or "assessment" means the gathering of information for the evaluation of a child's and caregiver's physical, psychiatric, psychological or mental health, educational, vocational, and social condition and family environment as they relate to the child's and caregiver's need for rehabilitative and treatment services, including substance abuse treatment services, mental health services, developmental services, literacy services, medical services, family services, and other specialized services, as appropriate.

(18) "Concurrent planning" means establishing a permanency goal in a case plan that uses reasonable efforts to reunify the

child with the parent, while at the same time establishing another goal that must be one of the following options:

(a) Adoption when a petition for termination of parental rights has been filed or will be filed;

(b) Permanent guardianship of a dependent child under s. 39.6221;

(c) Permanent placement with a fit and willing relative under s. 39.6231; or

(d) Placement in another planned permanent living arrangement under s. 39.6241.

(19) ~~(18)~~ "Court," unless otherwise expressly stated, means the circuit court assigned to exercise jurisdiction under this chapter.

(20) ~~(19)~~ "Department" means the Department of Children and Family Services.

(21) ~~(20)~~ "Diligent efforts by a parent" means a course of conduct which results in a reduction in risk to the child in the child's home that would allow the child to be safely placed permanently back in the home as set forth in the case plan.

(22) ~~(21)~~ "Diligent efforts of social service agency" means reasonable efforts to provide social services or reunification services made by any social service agency that is a party to a case plan.

(23) ~~(22)~~ "Diligent search" means the efforts of a social service agency to locate a parent or prospective parent whose identity or location is unknown, initiated as soon as the social service agency is made aware of the existence of such parent, with the search progress reported at each court hearing until

the parent is either identified and located or the court excuses further search.

(24) ~~(23)~~ "Disposition hearing" means a hearing in which the court determines the most appropriate protections, services, and placement for the child in dependency cases.

(25) ~~(24)~~ "District" means any one of the 15 service districts of the department established pursuant to s. 20.19.

(26) ~~(25)~~ "District administrator" means the chief operating officer of each service district of the department as defined in s. 20.19(5) and, where appropriate, includes any district administrator whose service district falls within the boundaries of a judicial circuit.

(27) ~~(26)~~ "Expedited termination of parental rights" means proceedings wherein a case plan with the goal of reunification is not being offered.

(28) ~~(27)~~ "False report" means a report of abuse, neglect, or abandonment of a child to the central abuse hotline, which report is maliciously made for the purpose of:

(a) Harassing, embarrassing, or harming another person;

(b) Personal financial gain for the reporting person;

(c) Acquiring custody of a child; or

(d) Personal benefit for the reporting person in any other private dispute involving a child.

The term "false report" does not include a report of abuse, neglect, or abandonment of a child made in good faith to the central abuse hotline.

(29) ~~(28)~~ "Family" means a collective body of persons,

consisting of a child and a parent, legal custodian, or adult relative, in which:

(a) The persons reside in the same house or living unit; or

(b) The parent, legal custodian, or adult relative has a legal responsibility by blood, marriage, or court order to support or care for the child.

(30) "Family team conference" means a process for family-focused intervention facilitated by professional staff which is designed to develop a plan for the care, safety, and well-being of a child and the child's family.

(31) ~~(29)~~ "Foster care" means care provided a child in a foster family or boarding home, group home, agency boarding home, child care institution, or any combination thereof.

(32) ~~(30)~~ "Harm" to a child's health or welfare can occur when any person:

(a) Inflicts or allows to be inflicted upon the child physical, mental, or emotional injury. In determining whether harm has occurred, the following factors must be considered in evaluating any physical, mental, or emotional injury to a child: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Such injury includes, but is not limited to:

1. Willful acts that produce the following specific injuries:

a. Sprains, dislocations, or cartilage damage.

b. Bone or skull fractures.

c. Brain or spinal cord damage.

d. Intracranial hemorrhage or injury to other internal organs.

e. Asphyxiation, suffocation, or drowning.

f. Injury resulting from the use of a deadly weapon.

g. Burns or scalding.

h. Cuts, lacerations, punctures, or bites.

i. Permanent or temporary disfigurement.

j. Permanent or temporary loss or impairment of a body part or function.

As used in this subparagraph, the term "willful" refers to the intent to perform an action, not to the intent to achieve a result or to cause an injury.

2. Purposely giving a child poison, alcohol, drugs, or other substances that substantially affect the child's behavior, motor coordination, or judgment or that result in sickness or internal injury. For the purposes of this subparagraph, the term "drugs" means prescription drugs not prescribed for the child or not administered as prescribed, and controlled substances as outlined in Schedule I or Schedule II of s. 893.03.

3. Leaving a child without adult supervision or arrangement appropriate for the child's age or mental or physical condition, so that the child is unable to care for the child's own needs or another's basic needs or is unable to exercise good judgment in responding to any kind of physical or emotional crisis.

4. Inappropriate or excessively harsh disciplinary action

that is likely to result in physical injury, mental injury as defined in this section, or emotional injury. The significance of any injury must be evaluated in light of the following factors: the age of the child; any prior history of injuries to the child; the location of the injury on the body of the child; the multiplicity of the injury; and the type of trauma inflicted. Corporal discipline may be considered excessive or abusive when it results in any of the following or other similar injuries:

a. Sprains, dislocations, or cartilage damage.

b. Bone or skull fractures.

c. Brain or spinal cord damage.

d. Intracranial hemorrhage or injury to other internal organs.

e. Asphyxiation, suffocation, or drowning.

f. Injury resulting from the use of a deadly weapon.

g. Burns or scalding.

h. Cuts, lacerations, punctures, or bites.

i. Permanent or temporary disfigurement.

j. Permanent or temporary loss or impairment of a body part or function.

k. Significant bruises or welts.

(b) Commits, or allows to be committed, sexual battery, as defined in chapter 794, or lewd or lascivious acts, as defined in chapter 800, against the child.

(c) Allows, encourages, or forces the sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; or

2. Engage in a sexual performance, as defined by chapter 827.

(d) Exploits a child, or allows a child to be exploited, as provided in s. 450.151.

(e) Abandons the child. Within the context of the definition of "harm," the term "abandons the child" means that the parent or legal custodian of a child or, in the absence of a parent or legal custodian, the person responsible for the child's welfare, while being able, makes no provision for the child's support and makes no effort to communicate with the child, which situation is sufficient to evince a willful rejection of parental obligation. If the efforts of the ~~such a~~ parent or legal custodian or person primarily responsible for the child's welfare to support and communicate with the child are only marginal efforts that do not evince a settled purpose to assume all parental duties, the child may be determined to have been abandoned. The term "abandoned" does not include an abandoned newborn infant as described in s. 383.50.

(f) Neglects the child. Within the context of the definition of "harm," the term "neglects the child" means that the parent or other person responsible for the child's welfare fails to supply the child with adequate food, clothing, shelter, or health care, although financially able to do so or although offered financial or other means to do so. However, a parent or legal custodian who, by reason of the legitimate practice of religious beliefs, does not provide specified medical treatment for a child may not be considered abusive or neglectful for that

reason alone, but such an exception does not:

1. Eliminate the requirement that such a case be reported to the department;

2. Prevent the department from investigating such a case; or

3. Preclude a court from ordering, when the health of the child requires it, the provision of medical services by a physician, as defined in this section, or treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.

(g) Exposes a child to a controlled substance or alcohol. Exposure to a controlled substance or alcohol is established by:

1. Use by the mother of a controlled substance or alcohol during pregnancy when the child, at birth, is demonstrably adversely affected by such usage; or

2. Continued chronic and severe use of a controlled substance or alcohol by a parent when the child is demonstrably adversely affected by such usage.

As used in this paragraph, the term "controlled substance" means prescription drugs not prescribed for the parent or not administered as prescribed and controlled substances as outlined in Schedule I or Schedule II of s. 893.03.

(h) Uses mechanical devices, unreasonable restraints, or extended periods of isolation to control a child.

(i) Engages in violent behavior that demonstrates a wanton disregard for the presence of a child and could reasonably

result in serious injury to the child.

(j) Negligently fails to protect a child in his or her care from inflicted physical, mental, or sexual injury caused by the acts of another.

(k) Has allowed a child's sibling to die as a result of abuse, abandonment, or neglect.

(l) Makes the child unavailable for the purpose of impeding or avoiding a protective investigation unless the court determines that the parent, legal custodian, or caregiver was fleeing from a situation involving domestic violence.

(33) ~~(31)~~ "Institutional child abuse or neglect" means situations of known or suspected child abuse or neglect in which the person allegedly perpetrating the child abuse or neglect is an employee of a private school, public or private day care center, residential home, institution, facility, or agency or any other person at such institution responsible for the child's care.

(34) ~~(32)~~ "Judge" means the circuit judge exercising jurisdiction pursuant to this chapter.

(35) ~~(33)~~ "Legal custody" means a legal status created by a court ~~order or letter of guardianship~~ which vests in a custodian of the person or guardian, whether an agency or an individual, the right to have physical custody of the child and the right and duty to protect, nurture, guide ~~train~~, and discipline the child and to provide him or her with food, shelter, education, and ordinary medical, dental, psychiatric, and psychological care. ~~The legal custodian is the person or entity in whom the legal right to custody is vested. For purposes of this chapter~~

~~only, when the phrase "parent or legal custodian" is used, it refers to rights or responsibilities of the parent and, only if there is no living parent with intact parental rights, to the rights or responsibilities of the legal custodian who has assumed the role of the parent.~~

~~(34) "Legal guardianship" means a judicially created relationship between the child and caregiver which is intended to be permanent and self-sustaining and is provided pursuant to the procedures in chapter 744.~~

(36) ~~(35)~~ "Licensed child-caring agency" means a person, society, association, or agency licensed by the department to care for, receive, and board children.

(37) ~~(36)~~ "Licensed child-placing agency" means a person, society, association, or institution licensed by the department to care for, receive, or board children and to place children in a licensed child-caring institution or a foster or adoptive home.

(38) ~~(37)~~ "Licensed health care professional" means a physician licensed under chapter 458, an osteopathic physician licensed under chapter 459, a nurse licensed under part I of chapter 464, a physician assistant licensed under chapter 458 or chapter 459, or a dentist licensed under chapter 466.

(39) ~~(38)~~ "Likely to injure oneself" means that, as evidenced by violent or other actively self-destructive behavior, it is more likely than not that within a 24-hour period the child will attempt to commit suicide or inflict serious bodily harm on himself or herself.

(40) ~~(39)~~ "Likely to injure others" means that it is more

likely than not that within a 24-hour period the child will inflict serious and unjustified bodily harm on another person.

~~(40) "Long-term relative custodian" means an adult relative who is a party to a long-term custodial relationship created by a court order pursuant to this chapter.~~

~~(41) "Long-term custody" or "long-term custodial relationship" means the relationship that a juvenile court order creates between a child and an adult relative of the child or other legal custodian approved by the court when the child cannot be placed in the custody of a parent and adoption is not deemed to be in the best interest of the child. Long-term custody confers upon the relative or other legal custodian, other than the department, the right to physical custody of the child, a right which will not be disturbed by the court except upon request of the legal custodian or upon a showing that the best interest of the child necessitates a change of custody for the child. A relative or other legal custodian who has been designated as a long-term custodian shall have all of the rights and duties of a parent, including, but not limited to, the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, and education, and ordinary medical, dental, psychiatric, and psychological care, unless these rights and duties are otherwise enlarged or limited by the court order establishing the long-term custodial relationship.~~

(41)~~(42)~~ "Mediation" means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is

an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem solving, and exploring settlement alternatives.

(42) ~~(43)~~ "Mental injury" means an injury to the intellectual or psychological capacity of a child as evidenced by a discernible and substantial impairment in the ability to function within the normal range of performance and behavior.

(43) ~~(44)~~ "Necessary medical treatment" means care which is necessary within a reasonable degree of medical certainty to prevent the deterioration of a child's condition or to alleviate immediate pain of a child.

(44) ~~(45)~~ "Neglect" occurs when a child is deprived of, or is allowed to be deprived of, necessary food, clothing, shelter, or medical treatment or a child is permitted to live in an environment when such deprivation or environment causes the child's physical, mental, or emotional health to be significantly impaired or to be in danger of being significantly impaired. The foregoing circumstances shall not be considered neglect if caused primarily by financial inability unless actual services for relief have been offered to and rejected by such person. A parent or legal custodian legitimately practicing religious beliefs in accordance with a recognized church or religious organization who thereby does not provide specific medical treatment for a child may ~~shall~~ not, for that reason alone, be considered a negligent parent or legal custodian;

however, such an exception does not preclude a court from ordering the following services to be provided, when the health of the child so requires:

(a) Medical services from a licensed physician, dentist, optometrist, podiatric physician, or other qualified health care provider; or

(b) Treatment by a duly accredited practitioner who relies solely on spiritual means for healing in accordance with the tenets and practices of a well-recognized church or religious organization.

Neglect of a child includes acts or omissions.

(45) ~~(46)~~ "Next of kin" means an adult relative of a child who is the child's brother, sister, grandparent, aunt, uncle, or first cousin.

(46) ~~(47)~~ "Other person responsible for a child's welfare" includes the child's legal guardian~~, legal custodian,~~ or foster parent; an employee of a private school, public or private child day care center, residential home, institution, facility, or agency; or any other person legally responsible for the child's welfare in a residential setting; and also includes an adult sitter or relative entrusted with a child's care. For the purpose of departmental investigative jurisdiction, this definition does not include law enforcement officers, or employees of municipal or county detention facilities or the Department of Corrections, while acting in an official capacity.

(47) ~~(48)~~ "Out-of-home" means a placement outside of the home of the parents or a parent.

(48) ~~(49)~~ "Parent" means a woman who gives birth to a child and a man who was married to the mother at the time the child was conceived or born, who has been determined by a court to be the father of the child, who has filed an affidavit of paternity under s. 382.013(2), or who has claimed to be the father of the child and has provided, or has attempted to provide, the child, or the mother during her pregnancy, with support in a repetitive, customary manner ~~whose consent to the adoption of the child would be required under s. 63.062(1)~~. If a child has been legally adopted, the term "parent" means the adoptive mother or father of the child. The term does not include an individual whose parental relationship to the child has been legally terminated, or an alleged or prospective parent, unless the parental status falls within the terms of s. 39.503(1) or this subsection ~~s. 63.062(1)~~. For purposes of this chapter only, when the phrase "parent or legal custodian" is used, it refers to rights or responsibilities of the parent and, only if there is no living parent with intact parental rights, to the rights or responsibilities of the legal custodian who has assumed the role of the parent.

(49) ~~(50)~~ "Participant," for purposes of a shelter proceeding, dependency proceeding, or termination of parental rights proceeding, means any person who is not a party but who should receive notice of hearings involving the child, including the actual custodian of the child, the foster parents or the legal custodian of the child, identified prospective parents, ~~grandparents entitled to priority for adoption consideration under s. 63.0425, actual custodians of the child,~~ and any other

person whose participation may be in the best interest of the child. A community-based agency under contract with the department to provide protective services may be designated as a participant at the discretion of the court. Participants may be granted leave by the court to be heard without the necessity of filing a motion to intervene.

(50) ~~(51)~~ "Party" means the parent or parents of the child, the petitioner, the department, the guardian ad litem or the representative of the guardian ad litem program when the program has been appointed, and the child. The presence of the child may be excused by order of the court when presence would not be in the child's best interest. Notice to the child may be excused by order of the court when the age, capacity, or other condition of the child is such that the notice would be meaningless or detrimental to the child.

(51) "Permanency goal" means the living arrangement identified for the child to return to or identified as the permanent living arrangement of the child. Permanency goals applicable under this chapter are:

(a) Reunification;

(b) Adoption when a petition for termination of parental rights has been or will be filed;

(c) Permanent guardianship of a dependent child under s. 39.6221;

(d) Permanent placement with a fit and willing relative under s. 39.6231; or

(e) Placement in another planned permanent living arrangement under s. 39.6241.

The permanency goal is also the case plan goal. If concurrent case planning is being used, reunification may be pursued at the same time that another permanency goal is pursued.

(52) "Permanency plan" means the plan that establishes the placement intended to serve as the child's permanent home.

(53) "Permanent guardian" means the relative or other adult in a permanent guardianship of a dependent child under s. 39.6221.

(54) "Permanent guardianship of a dependent child" means a legal relationship that a court creates under s. 39.6221 between a child and a relative or other adult approved by the court which is intended to be permanent and self-sustaining through the transfer of parental rights with respect to the child relating to protection, education, care, and control of the child, custody of the child, and decisionmaking on behalf of the child.

(55) ~~(52)~~ "Physical injury" means death, permanent or temporary disfigurement, or impairment of any bodily part.

(56) ~~(53)~~ "Physician" means any licensed physician, dentist, podiatric physician, or optometrist and includes any intern or resident.

(57) ~~(54)~~ "Preliminary screening" means the gathering of preliminary information to be used in determining a child's need for further evaluation or assessment or for referral for other substance abuse services through means such as psychosocial interviews; urine and breathalyzer screenings; and reviews of available educational, delinquency, and dependency records of

the child.

(58) ~~(55)~~ "Preventive services" means social services and other supportive and rehabilitative services provided to the parent or legal custodian of the child and to the child for the purpose of averting the removal of the child from the home or disruption of a family which will or could result in the placement of a child in foster care. Social services and other supportive and rehabilitative services shall promote the child's need for physical, mental, and emotional health and a safe, stable, living environment, shall promote family autonomy, and shall strengthen family life, whenever possible.

(59) ~~(56)~~ "Prospective parent" means a person who claims to be, or has been identified as, a person who may be a mother or a father of a child.

(60) ~~(57)~~ "Protective investigation" means the acceptance of a report alleging child abuse, abandonment, or neglect, as defined in this chapter, by the central abuse hotline or the acceptance of a report of other dependency by the department; the investigation of each report; the determination of whether action by the court is warranted; the determination of the disposition of each report without court or public agency action when appropriate; and the referral of a child to another public or private agency when appropriate.

(61) ~~(58)~~ "Protective investigator" means an authorized agent of the department who receives and investigates reports of child abuse, abandonment, or neglect; who, as a result of the investigation, may recommend that a dependency petition be filed for the child; and who performs other duties necessary to carry

out the required actions of the protective investigation function.

(62) ~~(59)~~ "Protective supervision" means a legal status in dependency cases which permits the child to remain safely in his or her own home or other nonlicensed placement under the supervision of an agent of the department and which must be reviewed by the court during the period of supervision.

(63) ~~(60)~~ "Relative" means a grandparent, great-grandparent, sibling, first cousin, aunt, uncle, great-aunt, great-uncle, niece, or nephew, whether related by the whole or half blood, by affinity, or by adoption. The term does not include a stepparent.

(64) ~~(61)~~ "Reunification services" means social services and other supportive and rehabilitative services provided to the parent of the child, to the child, and, where appropriate, to the relative placement, nonrelative placement, or foster parents of the child, for the purpose of enabling a child who has been placed in out-of-home care to safely return to his or her parent at the earliest possible time. The health and safety of the child shall be the paramount goal of social services and other supportive and rehabilitative services. The ~~Such~~ services shall promote the child's need for physical, mental, and emotional health and a safe, stable, living environment, shall promote family autonomy, and shall strengthen family life, whenever possible.

(65) ~~(62)~~ "Secretary" means the Secretary of Children and Family Services.

(66) ~~(63)~~ "Sexual abuse of a child" means one or more of

the following acts:

(a) Any penetration, however slight, of the vagina or anal opening of one person by the penis of another person, whether or not there is the emission of semen.

(b) Any sexual contact between the genitals or anal opening of one person and the mouth or tongue of another person.

(c) Any intrusion by one person into the genitals or anal opening of another person, including the use of any object for this purpose, except that this does not include any act intended for a valid medical purpose.

(d) The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of either the child or the perpetrator, except that this does not include:

1. Any act which may reasonably be construed to be a normal caregiver responsibility, any interaction with, or affection for a child; or

2. Any act intended for a valid medical purpose.

(e) The intentional masturbation of the perpetrator's genitals in the presence of a child.

(f) The intentional exposure of the perpetrator's genitals in the presence of a child, or any other sexual act intentionally perpetrated in the presence of a child, if such exposure or sexual act is for the purpose of sexual arousal or gratification, aggression, degradation, or other similar purpose.

(g) The sexual exploitation of a child, which includes allowing, encouraging, or forcing a child to:

1. Solicit for or engage in prostitution; or

2. Engage in a sexual performance, as defined by chapter 827.

(67) ~~(64)~~ "Shelter" means a placement with a relative or a nonrelative, or in a licensed home or facility, for the temporary care of a child who is alleged to be or who has been found to be dependent, pending court disposition before or after adjudication.

(68) ~~(65)~~ "Shelter hearing" means a hearing in which the court determines whether probable cause exists to keep a child in shelter status pending further investigation of the case.

(69) ~~(66)~~ "Social service agency" means the department, a licensed child-caring agency, or a licensed child-placing agency.

(70) ~~(67)~~ "Substance abuse" means using, without medical reason, any psychoactive or mood-altering drug, including alcohol, in such a manner as to induce impairment resulting in dysfunctional social behavior.

(71) ~~(68)~~ "Substantial compliance" means that the circumstances which caused the creation of the case plan have been significantly remedied to the extent that the well-being and safety of the child will not be endangered upon the child's remaining with or being returned to the child's parent.

(72) ~~(69)~~ "Taken into custody" means the status of a child immediately when temporary physical control over the child is attained by a person authorized by law, pending the child's release or placement.

(73) ~~(70)~~ "Temporary legal custody" means the relationship

that a ~~juvenile~~ court creates between a child and an adult relative of the child, legal custodian, agency, or other person approved by the court until a more permanent arrangement is ordered. Temporary legal custody confers upon the custodian the right to have temporary physical custody of the child and the right and duty to protect, nurture, guide ~~train~~, and discipline the child and to provide the child with food, shelter, and education, and ordinary medical, dental, psychiatric, and psychological care, unless these rights and duties are otherwise enlarged or limited by the court order establishing the temporary legal custody relationship.

(74) ~~(71)~~ "Victim" means any child who has sustained or is threatened with physical, mental, or emotional injury identified in a report involving child abuse, neglect, or abandonment, or child-on-child sexual abuse.

~~(72) "Long-term licensed custody" means the relationship that a juvenile court order creates between a child and a placement licensed by the state to provide residential care for dependent children, if the licensed placement is willing and able to continue to care for the child until the child reaches the age of majority.~~

Section 2. Subsection (15) is added to section 39.0121, Florida Statutes, to read:

39.0121 Specific rulemaking authority.--Pursuant to the requirements of s. 120.536, the department is specifically authorized to adopt, amend, and repeal administrative rules which implement or interpret law or policy, or describe the procedure and practice requirements necessary to implement this

chapter, including, but not limited to, the following:

(15) Provision for making available to all physical custodians and family services counselors the information required by s. 39.6012(2) and for ensuring that this information follows the child until permanency has been achieved.

Section 3. Section 39.013, Florida Statutes, is amended to read:

39.013 Procedures and jurisdiction; right to counsel.--

(1) All procedures, including petitions, pleadings, subpoenas, summonses, and hearings, in this chapter shall be conducted according to the Florida Rules of Juvenile Procedure unless otherwise provided by law. Parents must be informed by the court of their right to counsel in dependency proceedings at each stage of the dependency proceedings. Parents who are unable to afford counsel must be appointed counsel.

(2) The circuit court has ~~shall have~~ exclusive original jurisdiction of all proceedings under this chapter, of a child voluntarily placed with a licensed child-caring agency, a licensed child-placing agency, or the department, and of the adoption of children whose parental rights have been terminated under this chapter. Jurisdiction attaches when the initial shelter petition, dependency petition, or termination of parental rights petition is filed or when a child is taken into the custody of the department. The circuit court may assume jurisdiction over any such proceeding regardless of whether the child was in the physical custody of both parents, was in the sole legal or physical custody of only one parent, caregiver, or some other person, or was in the physical or legal custody of no

person when the event or condition occurred that brought the child to the attention of the court. When the court obtains jurisdiction of any child who has been found to be dependent, the court shall retain jurisdiction, unless relinquished by its order, until the child reaches 18 years of age. However, if a youth petitions the court at any time before his or her 19th birthday requesting the court's continued jurisdiction, the juvenile court may retain jurisdiction under this chapter for a period not to exceed 1 year following the youth's 18th birthday for the purpose of determining whether appropriate aftercare support, Road-to-Independence Scholarship, transitional support, mental health, and developmental disability services, to the extent otherwise authorized by law, have been provided to the formerly dependent child who was in the legal custody of the department immediately before his or her 18th birthday. If a petition for special immigrant juvenile status and an application for adjustment of status have been filed on behalf of a foster child and the petition and application have not been granted by the time the child reaches 18 years of age, the court may retain jurisdiction over the dependency case solely for the purpose of allowing the continued consideration of the petition and application by federal authorities. Review hearings for the child shall be set solely for the purpose of determining the status of the petition and application. The court's jurisdiction terminates upon the final decision of the federal authorities. Retention of jurisdiction in this instance does not affect the services available to a young adult under s. 409.1451. The court may not retain jurisdiction of the case after the immigrant

child's 22nd birthday.

(3) When a child is under the jurisdiction of the circuit court pursuant to ~~the provisions of~~ this chapter, the circuit court assigned to handle dependency matters may exercise the general and equitable jurisdiction over guardianship proceedings under ~~pursuant to the provisions of~~ chapter 744 and proceedings for temporary custody of minor children by extended family under ~~pursuant to the provisions of~~ chapter 751.

(4) Orders entered pursuant to this chapter which affect the placement of, access to, parental time with, adoption of, or parental rights and responsibilities for a minor child shall take precedence over other orders entered in civil actions or proceedings. However, if the court has terminated jurisdiction, the ~~such~~ order may be subsequently modified by a court of competent jurisdiction in any other civil action or proceeding affecting placement of, access to, parental time with, adoption of, or parental rights and responsibilities for the same minor child.

(5) The court shall expedite the resolution of the placement issue in cases involving a child who has been removed from the parent and placed in an out-of-home placement.

(6) The court shall expedite the judicial handling of all cases when the child has been removed from the parent and placed in an out-of-home placement.

(7) Children removed from their homes shall be provided equal treatment with respect to goals, objectives, services, and case plans, without regard to the location of their placement.

(8) For any child who remains in the custody of the

department, the court shall, within the month which constitutes the beginning of the 6-month period before the child's 18th birthday, hold a hearing to review the progress of the child while in the custody of the department.

(9)(a) At each stage of the proceedings under this chapter, the court shall advise the parents of the right to counsel. The court shall appoint counsel for indigent parents. The court shall ascertain whether the right to counsel is understood. When right to counsel is waived, the court shall determine whether the waiver is knowing and intelligent. The court shall enter its findings in writing with respect to the appointment or waiver of counsel for indigent parents or the waiver of counsel by nonindigent parents.

(b) Once counsel has entered an appearance or been appointed by the court to represent the parent of the child, the attorney shall continue to represent the parent throughout the proceedings. If the attorney-client relationship is discontinued, the court shall advise the parent of the right to have new counsel retained or appointed for the remainder of the proceedings.

(c)1. A ~~No~~ waiver of counsel may not be accepted if it appears that the parent is unable to make an intelligent and understanding choice because of mental condition, age, education, experience, the nature or complexity of the case, or other factors.

2. A waiver of counsel made in court must be of record.

3. If a waiver of counsel is accepted at any hearing or proceeding, the offer of assistance of counsel must be renewed

by the court at each subsequent stage of the proceedings at which the parent appears without counsel.

(d) This subsection does not apply to any parent who has voluntarily executed a written surrender of the child and consents to the entry of a court order terminating parental rights.

~~(10) The time limitations in this chapter do not include:~~

~~(a) Periods of delay resulting from a continuance granted at the request or with the consent of the child's counsel or the child's guardian ad litem, if one has been appointed by the court, or, if the child is of sufficient capacity to express reasonable consent, at the request or with the consent of the child.~~

~~(b) Periods of delay resulting from a continuance granted at the request of any party, if the continuance is granted:~~

~~1. Because of an unavailability of evidence material to the case when the requesting party has exercised due diligence to obtain such evidence and there are substantial grounds to believe that such evidence will be available within 30 days. However, if the requesting party is not prepared to proceed within 30 days, any other party, inclusive of the parent or legal custodian, may move for issuance of an order to show cause or the court on its own motion may impose appropriate sanctions, which may include dismissal of the petition.~~

~~2. To allow the requesting party additional time to prepare the case and additional time is justified because of an exceptional circumstance.~~

~~(c) Reasonable periods of delay necessary to accomplish~~

~~notice of the hearing to the child's parent or legal custodian; however, the petitioner shall continue regular efforts to provide notice to the parents during such periods of delay.~~

~~(d) Reasonable periods of delay resulting from a continuance granted at the request of the parent or legal custodian of a subject child.~~

~~(e) Notwithstanding the foregoing, continuances and extensions of time are limited to the number of days absolutely necessary to complete a necessary task in order to preserve the rights of a party or the best interests of a child. Time is of the essence for the best interests of dependent children in conducting dependency proceedings in accordance with the time limitations set forth in this chapter. Time limitations are a right of the child which may not be waived, extended, or continued at the request of any party in advance of the particular circumstances or need arising upon which delay of the proceedings may be warranted.~~

~~(f) Continuances or extensions of time may not total more than 60 days for all parties within any 12-month period during proceedings under this chapter. A continuance or extension of time beyond the 60 days may be granted only for extraordinary circumstances necessary to preserve the constitutional rights of a party or when substantial evidence demonstrates that the child's best interests will be affirmatively harmed without the granting of a continuance or extension of time.~~

(10) ~~(11)~~ Court-appointed counsel representing indigent parents at shelter hearings shall be paid from state funds appropriated by general law.

(11) ~~(12)~~ The court shall encourage the Statewide Guardian Ad Litem Office to provide greater representation to those children who are within 1 year of transferring out of foster care.

Section 4. Section 39.0136, Florida Statutes, is created to read:

39.0136 Time limitations; continuances.--

(1) The Legislature finds that time is of the essence for establishing permanency for a child in the dependency system. Time limitations are a right of the child which may not be waived, extended, or continued at the request of any party except as provided in this section.

(2) The time limitations in this chapter do not include:

(a) Periods of delay resulting from a continuance granted at the request of the child's counsel or the child's guardian ad litem or, if the child is of sufficient capacity to express reasonable consent, at the request or with the consent of the child. The court must consider the best interest of the child when determining periods of delay under this section.

(b) Periods of delay resulting from a continuance granted at the request of any party if the continuance is granted:

1. Because of an unavailability of evidence that is material to the case if the requesting party has exercised due diligence to obtain evidence and there are substantial grounds to believe that the evidence will be available within 30 days. However, if the requesting party is not prepared to proceed within 30 days, any other party may move for issuance of an order to show cause or the court, on its own motion, may impose

appropriate sanctions, which may include dismissal of the petition.

2. To allow the requesting party additional time to prepare the case and additional time is justified because of an exceptional circumstance.

(c) Reasonable periods of delay necessary to accomplish notice of the hearing to the child's parent or legal custodian; however, the petitioner shall continue regular efforts to provide notice to the parents during the periods of delay.

(3) Notwithstanding subsection (2), in order to expedite permanency for a child, the total time allowed for continuances or extensions of time may not exceed 60 days within any 12-month period for proceedings conducted under this chapter. A continuance or extension of time may be granted only for extraordinary circumstances in which it is necessary to preserve the constitutional rights of a party or if substantial evidence exists to demonstrate that without granting a continuance or extension of time the child's best interest will be harmed.

(4) Notwithstanding subsection (2), a continuance or an extension of time is limited to the number of days absolutely necessary to complete a necessary task in order to preserve the rights of a party or the best interest of a child.

Section 5. Section 39.0137, Florida Statutes, is created to read:

39.0137 Federal law; rulemaking authority.--

(1) This chapter does not supersede the requirements of the Indian Child Welfare Act, 25 U.S.C. ss. 1901 et seq., or the Multi-Ethnic Placement Act of 1994, Pub. L. No. 103-382, as

amended, or the implementing regulations.

(2) The department shall adopt rules no later than July 1, 2007, to ensure that the provisions of these federal laws are enforced in this state. The department is encouraged to enter into agreements with recognized American Indian tribes in order to facilitate the implementation of the Indian Child Welfare Act.

Section 6. Section 39.0138, Florida Statutes, is created to read:

39.0138 Requirements for placement of children; exemptions from disqualification.--

(1)(a) The department may conduct criminal records checks equivalent to the level 2 screening required in s. 435.04 for any person being considered by the department for approval for placement of a child subject to a placement decision under this chapter. Approval for placement with any person other than a parent may not be granted in any case in which a criminal records check reveals a felony conviction in a court of competent jurisdiction for:

1. Child abuse, abandonment, or neglect; spousal abuse; a crime against children, including child pornography, or a crime involving violence, including sexual battery, sexual assault, or homicide, but not including other physical assault or battery, if the felony was committed at any time; or

2. Physical assault, battery, or a drug-related offense if the felony was committed within the past 5 years.

(b) Notwithstanding paragraph (a), the department may place a child in a home that otherwise meets placement

requirements if state and local criminal records checks do not disqualify the applicant and if the department has submitted fingerprint information to the Department of Law Enforcement for forwarding to the Federal Bureau of Investigation and is awaiting the results of the federal criminal records check.

(c) Persons with whom placement of a child is being considered or approved must disclose to the department any prior or pending local, state, or federal criminal proceedings in which they are or have been involved.

(d) The results of any criminal records check of a parent conducted under this section must be considered in determining whether placement with the parent will jeopardize the safety of the child being placed.

(2)(a) The court may review the decision of the department to grant or deny an exemption upon the motion of any party, the request of any person who has been denied an exemption by the department, or on its own motion. The court shall prepare written findings to support its decision in this matter.

(b) A person seeking placement of a child when the department has denied the placement based on a disqualifying criminal offense has the burden of setting forth sufficient evidence of rehabilitation, including, but not limited to, the circumstances surrounding the incident for which an exemption from disqualification is sought, the time period that has elapsed since the incident, the nature of the harm caused to the victim, the history of the person since the incident, and any other evidence or circumstances indicating that the person will not present a danger if the placement of the child is allowed.

Section 7. Paragraph (a) of subsection (1), paragraph (a) of subsection (2), and subsection (5) of section 39.201, Florida Statutes, are amended to read:

39.201 Mandatory reports of child abuse, abandonment, or neglect; mandatory reports of death; central abuse hotline.--

(1)(a) Any person who knows, or has reasonable cause to suspect, that a child is abused, abandoned, or neglected by a parent, legal custodian, caregiver, or other person responsible for the child's welfare, as defined in this chapter, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall report such knowledge or suspicion to the department in the manner prescribed in subsection (2).

(2)(a) Each report of known or suspected child abuse, abandonment, or neglect by a parent, legal custodian, caregiver, or other person responsible for the child's welfare as defined in this chapter, except those solely under s. 827.04(3), and each report that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care shall be made immediately to the department's central abuse hotline on the single statewide toll-free telephone number. Personnel at the department's central abuse hotline shall determine if the report received meets the statutory definition of child abuse, abandonment, or neglect. Any report meeting one of these definitions shall be accepted for the protective investigation pursuant to part III of this chapter.

(5) The department shall be capable of receiving and investigating, 24 hours a day, 7 days a week, reports of known or suspected child abuse, abandonment, or neglect and reports that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care ~~24 hours a day, 7 days a week~~. If it appears that the immediate safety or well-being of a child is endangered, that the family may flee or the child will be unavailable for purposes of conducting a child protective investigation, or that the facts otherwise so warrant, the department shall commence an investigation immediately, regardless of the time of day or night. In all other child abuse, abandonment, or neglect cases, a child protective investigation shall be commenced within 24 hours after receipt of the report. In an institutional investigation, the alleged perpetrator may be represented by an attorney, at his or her own expense, or accompanied by another person, if the person or the attorney executes an affidavit of understanding with the department and agrees to comply with the confidentiality provisions of s. 39.202. The absence of an attorney or other person does not prevent the department from proceeding with other aspects of the investigation, including interviews with other persons. In institutional child abuse cases when the institution is not operating and the child cannot otherwise be located, the investigation shall commence immediately upon the resumption of operation. If requested by a state attorney or local law enforcement agency, the department shall furnish all investigative reports to that agency.

Section 8. Subsections (1), (2), (5), and (22) of section 39.301, Florida Statutes, are amended, and subsection (23) is added to that section, to read:

39.301 Initiation of protective investigations.--

(1) Upon receiving an oral or written report of known or suspected child abuse, abandonment, or neglect, or that a child is in need of supervision and care and has no parent, legal custodian, or responsible adult relative immediately known and available to provide supervision and care, the central abuse hotline shall determine if the report requires an immediate onsite protective investigation. For reports requiring an immediate onsite protective investigation, the central abuse hotline shall immediately notify the department's designated children and families district staff responsible for protective investigations to ensure that an onsite investigation is promptly initiated. For reports not requiring an immediate onsite protective investigation, the central abuse hotline shall notify the department's designated children and families district staff responsible for protective investigations in sufficient time to allow for an investigation. At the time of notification of district staff with respect to the report, the central abuse hotline shall also provide information on any previous report concerning a subject of the present report or any pertinent information relative to the present report or any noted earlier reports.

(2)(a) The department shall immediately forward allegations of criminal conduct to the municipal or county law enforcement agency of the municipality or county in which the

alleged conduct has occurred.

(b) As used in this subsection, the term "criminal conduct" means:

1. A child is known or suspected to be the victim of child abuse, as defined in s. 827.03, or of neglect of a child, as defined in s. 827.03.

2. A child is known or suspected to have died as a result of abuse or neglect.

3. A child is known or suspected to be the victim of aggravated child abuse, as defined in s. 827.03.

4. A child is known or suspected to be the victim of sexual battery, as defined in s. 827.071, or of sexual abuse, as defined in s. 39.01.

5. A child is known or suspected to be the victim of institutional child abuse or neglect, as defined in s. 39.01, and as provided for in s. 39.302(1).

6. A child is known or suspected to be a victim of human trafficking, as provided in s. 787.06.

(c) Upon receiving a written report of an allegation of criminal conduct from the department, the law enforcement agency shall review the information in the written report to determine whether a criminal investigation is warranted. If the law enforcement agency accepts the case for criminal investigation, it shall coordinate its investigative activities with the department, whenever feasible. If the law enforcement agency does not accept the case for criminal investigation, the agency shall notify the department in writing.

(d) The local law enforcement agreement required in s.

39.306 shall describe the specific local protocols for implementing this section.

(5)(a) Upon commencing an investigation under this part, the child protective investigator shall inform any subject of the investigation of the following:

1. The names of the investigators and identifying credentials from the department.

2. The purpose of the investigation.

3. The right to obtain his or her own attorney and ways that the information provided by the subject may be used.

4. The possible outcomes and services of the department's response, which shall be explained to the parent or legal custodian.

5. The right of the parent or legal custodian to be involved to the fullest extent possible in determining the nature of the allegation and the nature of any identified problem.

6. The duty of the parent or legal custodian to report any change in the residence or location of the child to the investigator and that the duty to report continues until the investigation is closed.

(b) The department's training program shall ensure that protective investigators know how to fully inform parents or legal custodians of their rights and options, including opportunities for audio or video recording of investigators' interviews with parents or legal custodians or children.

(22) When an investigation is closed and a person is not identified as a caregiver responsible for the abuse, neglect, or

abandonment alleged in the report, the fact that the person is named in some capacity in the report may not be used in any way to adversely affect the interests of that person. This prohibition applies to any use of the information in employment screening, licensing, child placement, adoption, or any other decisions by a private adoption agency or a state agency or its contracted providers, except that a previous report may be used to determine whether a child is safe and what the known risk is to the child at any stage of a child protection proceeding.

(23) If, after having been notified of the requirement to report a change in residence or location of the child to the protective investigator, a parent or legal custodian causes the child to move, or allows the child to be moved, to a different residence or location, or if the child leaves the residence on his or her own accord and the parent or legal custodian does not notify the protective investigator of the move within 2 business days, the child may be considered to be a missing child for the purposes of filing a report with a law enforcement agency under s. 937.021.

Section 9. Subsection (2) of section 39.303, Florida Statutes, is amended to read:

39.303 Child protection teams; services; eligible cases.--The Children's Medical Services Program in the Department of Health shall develop, maintain, and coordinate the services of one or more multidisciplinary child protection teams in each of the service districts of the Department of Children and Family Services. Such teams may be composed of appropriate representatives of school districts and appropriate health,

mental health, social service, legal service, and law enforcement agencies. The Legislature finds that optimal coordination of child protection teams and sexual abuse treatment programs requires collaboration between the Department of Health and the Department of Children and Family Services. The two departments shall maintain an interagency agreement that establishes protocols for oversight and operations of child protection teams and sexual abuse treatment programs. The Secretary of Health and the Deputy Secretary for Children's Medical Services, in consultation with the Secretary of Children and Family Services, shall maintain the responsibility for the screening, employment, and, if necessary, the termination of child protection team medical directors, at headquarters and in the 15 districts. Child protection team medical directors shall be responsible for oversight of the teams in the districts.

(2) The child abuse, abandonment, and neglect reports that must be referred by the department ~~of Children and Family Services~~ to child protection teams of the Department of Health for an assessment and other appropriate available support services as set forth in subsection (1) must include cases involving:

(a) Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age.

(b) Bruises anywhere on a child 5 years of age or under.

(c) Any report alleging sexual abuse of a child ~~in which vaginal or anal penetration is alleged or in which other unlawful sexual conduct has been determined to have occurred~~.

(d) Any sexually transmitted disease in a prepubescent

child.

(e) Reported malnutrition of a child and failure of a child to thrive.

(f) Reported medical neglect of a child.

(g) Any family in which one or more children have been pronounced dead on arrival at a hospital or other health care facility, or have been injured and later died, as a result of suspected abuse, abandonment, or neglect, when any sibling or other child remains in the home.

(h) Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.

Section 10. Subsections (10) and (16) of section 39.402, Florida Statutes, are amended, and subsections (17) and (18) are added to that section, to read:

39.402 Placement in a shelter.--

(10)(a) The shelter hearing order shall contain a written determination as to whether the department has made a reasonable effort to prevent or eliminate the need for removal or continued removal of the child from the home. This determination must include a description of which specific services, if available, could prevent or eliminate the need for removal or continued removal from the home and the date by which the services are expected to become available.

(b) If services are not available to prevent or eliminate the need for removal or continued removal of the child from the home, the written determination must also contain a explanation describing why the services are not available for the child.

(c) If the department has not made ~~such~~ an effort to

prevent or eliminate the need for removal, the court shall order the department to provide appropriate and available services to ensure the protection of the child in the home when the ~~such~~ services are necessary for the child's health and safety.

(16) At the conclusion of a shelter hearing, the court shall:

(a) Notify all parties in writing of the next scheduled hearing to review the shelter placement. The ~~Such~~ hearing shall be held no later than 30 days after placement of the child in shelter status, in conjunction with the arraignment hearing, and at such times as are otherwise provided by law or determined by the court to be necessary; and~~.~~

(b) Notify all parties in writing of the date, time, and place of the case plan conference, family team conference, or mediation that will be used to develop the case plan. The case plan conference, family team conference, or mediation must take place no later than 30 days after placing the child in shelter status.

(17) At the shelter hearing, the court shall inquire of the parent whether the parent has relatives who might be considered as a placement for the child. The parent shall provide to the court and all parties identification and location information regarding the relatives. The court shall advise the parent that the parent has a continuing duty to inform the department of any relative who should be considered as a placement for the child.

(18) The court shall advise the parents that, if the parents fail to substantially comply with the case plan, their

parental rights may be terminated and that the child's out-of-home placement may become permanent.

Section 11. Present subsections (7) and (8) of section 39.507, Florida Statutes, are redesignated as subsections (8) and (9), respectively, and a new subsection (7) is added to that section, to read:

39.507 Adjudicatory hearings; orders of adjudication.--

(7) If a court adjudicates a child dependent and the child is in out-of-home care, the court shall inquire of the parent or parents whether the parents have relatives who might be considered as a placement for the child. The court shall advise the parents that, if the parents fail to substantially comply with the case plan, their parental rights may be terminated and that the child's out-of-home placement may become permanent. The parent or parents shall provide to the court and all parties identification and location information of the relatives.

Section 12. Paragraph (c) of subsection (1) and paragraph (a) of subsection (2) of section 39.5085, Florida Statutes, are amended to read:

39.5085 Relative Caregiver Program.--

(1) It is the intent of the Legislature in enacting this section to:

(c) Recognize that permanency in the best interests of the child can be achieved through a variety of permanency options, including permanent guardianship under s. 39.6221 if the guardian is a relative, permanent placement with a fit and willing relative ~~long-term relative custody~~, guardianship under chapter 744, or adoption, by providing additional placement

options and incentives that will achieve permanency and stability for many children who are otherwise at risk of foster care placement because of abuse, abandonment, or neglect, but who may successfully be able to be placed by the dependency court in the care of such relatives.

(2)(a) The Department of Children and Family Services shall establish and operate the Relative Caregiver Program under ~~pursuant to~~ eligibility guidelines established in this section as further implemented by rule of the department. The Relative Caregiver Program shall, within the limits of available funding, provide financial assistance to:

1. Relatives who are within the fifth degree by blood or marriage to the parent or stepparent of a child and who are caring full-time for that dependent child in the role of substitute parent as a result of a court's determination of child abuse, neglect, or abandonment and subsequent placement with the relative under ~~pursuant to~~ this chapter.

2. Relatives who are within the fifth degree by blood or marriage to the parent or stepparent of a child and who are caring full-time for that dependent child, and a dependent half-brother or half-sister of that dependent child, in the role of substitute parent as a result of a court's determination of child abuse, neglect, or abandonment and subsequent placement with the relative under ~~pursuant to~~ this chapter.

The ~~Such~~ placement may be either court-ordered temporary legal custody to the relative under protective supervision of the department under ~~pursuant to~~ s. 39.521(1)(b)3., or court-ordered

placement in the home of a relative as a permanency option under s. 39.6221 or s. 39.6231, or under former ~~pursuant to~~ s. 39.622. The Relative Caregiver Program shall offer financial assistance to caregivers who are relatives and who would be unable to serve in that capacity without the relative caregiver payment because of financial burden, thus exposing the child to the trauma of placement in a shelter or in foster care.

Section 13. Paragraph (d) of subsection (1) of section 39.521, Florida Statutes, is amended to read:

39.521 Disposition hearings; powers of disposition.--

(1) A disposition hearing shall be conducted by the court, if the court finds that the facts alleged in the petition for dependency were proven in the adjudicatory hearing, or if the parents or legal custodians have consented to the finding of dependency or admitted the allegations in the petition, have failed to appear for the arraignment hearing after proper notice, or have not been located despite a diligent search having been conducted.

(d) The court shall, in its written order of disposition, include all of the following:

1. The placement or custody of the child.

2. Special conditions of placement and visitation.

3. Evaluation, counseling, treatment activities, and other actions to be taken by the parties, if ordered.

4. The persons or entities responsible for supervising or monitoring services to the child and parent.

5. Continuation or discharge of the guardian ad litem, as appropriate.

6. The date, time, and location of the next scheduled review hearing, which must occur within the earlier of:

a. Ninety days after the disposition hearing;

b. Ninety days after the court accepts the case plan;

c. Six months after the date of the last review hearing; or

d. Six months after the date of the child's removal from his or her home, if no review hearing has been held since the child's removal from the home.

7. If the child is in an out-of-home placement, child support to be paid by the parents, or the guardian of the child's estate if possessed of assets which under law may be disbursed for the care, support, and maintenance of the child. The court may exercise jurisdiction over all child support matters, shall adjudicate the financial obligation, including health insurance, of the child's parents or guardian, and shall enforce the financial obligation as provided in chapter 61. The state's child support enforcement agency shall enforce child support orders under this section in the same manner as child support orders under chapter 61. Placement of the child shall not be contingent upon issuance of a support order.

8.a. If the court does not commit the child to the temporary legal custody of an adult relative, legal custodian, or other adult approved by the court, the disposition order shall include the reasons for such a decision and shall include a determination as to whether diligent efforts were made by the department to locate an adult relative, legal custodian, or other adult willing to care for the child in order to present

that placement option to the court instead of placement with the department.

b. If ~~diligent efforts are made to locate an adult relative willing and able to care for the child but, because~~ no suitable relative is found and~~,~~ the child is placed with the department or a legal custodian or other adult approved by the court, both the department and the court shall consider transferring temporary legal custody to an adult relative approved by the court at a later date, but neither the department nor the court is obligated to so place the child if it is in the child's best interest to remain in the current placement.

For the purposes of this subparagraph, "diligent efforts to locate an adult relative" means a search similar to the diligent search for a parent, but without the continuing obligation to search after an initial adequate search is completed.

9. Other requirements necessary to protect the health, safety, and well-being of the child, to preserve the stability of the child's educational placement, and to promote family preservation or reunification whenever possible.

Section 14. Subsection (1) of section 39.522, Florida Statutes, is amended to read:

39.522 Postdisposition change of custody.--The court may change the temporary legal custody or the conditions of protective supervision at a postdisposition hearing, without the necessity of another adjudicatory hearing.

(1) A child who has been placed in the child's own home

under the protective supervision of an authorized agent of the department, in the home of a relative, in the home of a legal custodian, or in some other place may be brought before the court by the department or by any other interested person, upon the filing of a petition alleging a need for a change in the conditions of protective supervision or the placement. If the parents or other legal custodians deny the need for a change, the court shall hear all parties in person or by counsel, or both. Upon the admission of a need for a change or after such hearing, the court shall enter an order changing the placement, modifying the conditions of protective supervision, or continuing the conditions of protective supervision as ordered. The standard for changing custody of the child shall be the best interest of the child. When applying this standard, the court shall consider the continuity of the child's placement in the same out-of-home residence as a factor when determining the best interest of the child. If the child is not placed in foster care, then the new placement for the child must meet the home study criteria and court approval pursuant to this chapter.

Section 15. Section 39.6011, Florida Statutes, is created to read:

39.6011 Case plan development.--

(1) The department shall prepare a draft of the case plan for each child receiving services under this chapter. A parent of a child may not be threatened or coerced with the loss of custody or parental rights for failing to admit in the case plan to abusing, neglecting, or abandoning a child. Participating in the development of a case plan is not an admission to any

allegation of abuse, abandonment, or neglect, and it is not a consent to a finding of dependency or termination of parental rights. The case plan shall be developed subject to the following requirements:

(a) The case plan must be developed in a face-to-face conference with the parent of the child, any court-appointed guardian ad litem, and, if appropriate, the child and the temporary custodian of the child. The conference to prepare a case plan must be scheduled under s. 39.402(16)(b) and must be conducted according to one of the following procedures:

1. A case plan conference that is a meeting among the parties described in this subsection.

2. A mediation if dependency mediation services are available and appropriate and in the best interest of the child.

3. A family team conference if a family team conference is available.

(b) The parent may receive assistance from any person or social service agency in preparing the case plan. The social service agency, the department, and the court, when applicable, shall inform the parent of the right to receive such assistance, including the right to assistance of counsel.

(c) If a parent is unwilling or unable to participate in developing a case plan, the department shall document that unwillingness or inability to participate. The documentation must be provided in writing to the parent when available for the court record, and the department shall prepare a case plan conforming as nearly as possible with the requirements set forth in this section. The unwillingness or inability of the parent to

participate in developing a case plan does not preclude the filing of a petition for dependency or for termination of parental rights. The parent, if available, must be provided a copy of the case plan and be advised that he or she may, at any time before the filing of a petition for termination of parental rights, enter into a case plan and that he or she may request judicial review of any provision of the case plan with which he or she disagrees at any court hearing set for the child.

(2) The case plan must be written simply and clearly in English and, if English is not the principal language of the child's parent, to the extent possible in the parent's principal language. Each case plan must contain:

(a) A description of the identified problem being addressed, including the parent's behavior or acts resulting in risk to the child and the reason for the intervention by the department.

(b) The permanency goal as defined in s. 39.01(51).

(c) If concurrent planning is being used, a description of the permanency goal of reunification with the parent or legal custodian in addition to a description of one of the remaining permanency goals described in s. 39.01(51).

(d) The date the compliance period expires. The case plan must be limited to as short a period as possible for accomplishing its provisions. The plan's compliance period expires no later than 12 months after the date the child was initially removed from the home or the date the case plan was accepted by the court, whichever occurs sooner.

(e) A written notice to the parent that failure of the

parent to substantially comply with the case plan may result in the termination of parental rights and that a material breach of the case plan may result in the filing of a petition for termination of parental rights sooner than the compliance period set forth in the case plan.

(3) The case plan must be signed by all parties, except that the signature of a child may be waived if the child is not of an age or capacity to participate in the case planning process. Signing the case plan constitutes an acknowledgement that the case plan has been developed by the parties and that they are in agreement as to the terms and conditions contained in the case plan. The refusal of a parent to sign the case plan does not prevent the court from accepting the case plan if the case plan is otherwise acceptable to the court. Signing the case plan does not constitute an admission to any allegation of abuse, abandonment, or neglect and does not constitute consent to a finding of dependency or termination of parental rights. Before signing the case plan, the department shall explain the provisions of the plan to all persons involved in its implementation, including, when appropriate, the child.

(4) The case plan must describe:

(a) The role of the foster parents or legal custodians when developing the services that are to be provided to the child, foster parents, or legal custodians.

(b) The minimum number of face-to-face meetings to be held each month between the parents and the department's family services counselors to review the progress of the plan, to eliminate barriers to progress, and to resolve conflicts or

disagreements.

(c) The parent's responsibility for financial support of the child, including, but not limited to, health insurance and child support. The case plan must list the costs associated with any services or treatment that the parent and child are expected to receive which are the financial responsibility of the parent. The determination of child support and other financial support shall be made independently of any determination of indigency under s. 39.013.

(5) When the permanency goal for a child is adoption, the case plan must include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangement for the child. At a minimum, the documentation shall include recruitment efforts that are specific to the child, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems.

(6) After the case plan has been developed, the department shall adhere to the following procedural requirements:

(a) If the parent's substantial compliance with the case plan requires the department to provide services to the parents or the child and the parents agree to begin compliance with the case plan before the case plan's acceptance by the court, the department shall make the appropriate referrals for services that will allow the parents to immediately begin the agreed upon tasks and services.

(b) After the case plan has been agreed upon and signed by the parties, a copy of the plan must immediately be given to the parties, including the child, if appropriate, and to other

persons as directed by the court.

1. A case plan must be prepared, but need not be submitted to the court, for a child who will be in care no longer than 30 days unless that child is placed in out-of-home care a second time within a 12-month period.

2. In each case in which a child has been placed in out-of-home care, a case plan must be prepared within 60 days after the department removes the child from the home and shall be submitted to the court before the disposition hearing for the court to review and approve.

3. After jurisdiction attaches, all case plans must be filed with the court and a copy provided to all the parties whose whereabouts are known not less than 3 business days before the disposition hearing. The department shall file with the court, and provide copies to the parties, all case plans prepared before jurisdiction of the court attached.

(7) The case plan must be filed with the court and copies provided to all parties, including the child, if appropriate, not less than 3 business days before the disposition hearing.

(8) The case plan must describe a process for making available to all physical custodians and family services counselors the information required by s. 39.6012(2) and for ensuring that this information follows the child until permanency has been achieved.

Section 16. Section 39.6012, Florida Statutes, is created to read:

39.6012 Case plan tasks; services.--

(1) The services to be provided to the parent and the

tasks that must be completed are subject to the following:

(a) The services described in the case plan must be designed to improve the conditions in the home and aid in maintaining the child in the home, facilitate the child's safe return to the home, ensure proper care of the child, or facilitate the child's permanent placement. The services offered must be the least intrusive possible into the life of the parent and child, must focus on clearly defined objectives, and must provide the most efficient path to quick reunification or permanent placement given the circumstances of the case and the child's need for safe and proper care.

(b) The case plan must describe each of the tasks with which the parent must comply and the services to be provided to the parent, specifically addressing the identified problem, including:

1. The type of services or treatment.

2. The date the department will provide each service or referral for the service if the service is being provided by the department or its agent.

3. The date by which the parent must complete each task.

4. The frequency of services or treatment provided. The frequency of the delivery of services or treatment provided shall be determined by the professionals providing the services or treatment on a case-by-case basis and adjusted according to their best professional judgment.

5. The location of the delivery of the services.

6. The staff of the department or service provider accountable for the services or treatment.

7. A description of the measurable objectives, including the timeframes specified for achieving the objectives of the case plan and addressing the identified problem.

(2) The case plan must include all available information relevant to the child's care, including, at a minimum:

(a) A description of the identified needs of the child while in care.

(b) A description of the plan for ensuring that the child receives safe and proper care and that services are provided to the child in order to address the child's needs. To the extent available and accessible, the following health, mental health, and education information and records of the child must be attached to the case plan and updated throughout the judicial review process:

1. The names and addresses of the child's health, mental health, and education providers.

2. The child's grade-level performance.

3. The child's school record.

4. Assurances that the child's placement takes into account proximity to the school in which the child is enrolled at the time of placement.

5. A record of the child's immunizations.

6. The child's known medical history, including any known problems.

7. The child's medications, if any.

8. Any other relevant health, mental health, and education information concerning the child.

(3) In addition to any other requirement, if the child is

in an out-of-home placement, the case plan must include:

(a) A description of the type of placement in which the child is to be living.

(b) A description of the parent's visitation rights and obligations and the plan for sibling visitation if the child has siblings and is separated from them.

(c) When appropriate, for a child who is 13 years of age or older, a written description of the programs and services that will help the child prepare for the transition from foster care to independent living.

(d) A discussion of the safety and the appropriateness of the child's placement, which placement is intended to be safe, the least restrictive and the most family-like setting available consistent with the best interest and special needs of the child, and in as close proximity as possible to the child's home.

Section 17. Section 39.6013, Florida Statutes, is created to read:

39.6013 Case plan amendments.--

(1) After the case plan has been developed under s. 39.6011, the tasks and services agreed upon in the plan may not be changed or altered in any way except as provided in this section.

(2) The case plan may be amended at any time in order to change the goal of the plan, employ the use of concurrent planning, add or remove tasks the parent must complete to substantially comply with the plan, provide appropriate services for the child, and update the child's health, mental health, and

education records required by s. 39.6012.

(3) The case plan may be amended upon approval of the court if all parties are in agreement regarding the amendments to the plan and the amended plan is signed by all parties and submitted to the court with a memorandum of explanation.

(4) The case plan may be amended by the court or upon motion of any party at any hearing to change the goal of the plan, employ the use of concurrent planning, or add or remove tasks the parent must complete in order to substantially comply with the plan if there is a preponderance of evidence demonstrating the need for the amendment. The need to amend the case plan may be based on information discovered or circumstances arising after the approval of the case plan for:

(a) A previously unaddressed condition that, without services, may prevent the child from safely returning to the home or may prevent the child from safely remaining in the home;

(b) The child's need for permanency, taking into consideration the child's age and developmental needs;

(c) The failure of a party to substantially comply with a task in the original case plan, including the ineffectiveness of a previously offered service; or

(d) An error or oversight in the case plan.

(5) The case plan may be amended by the court or upon the motion of any party at any hearing to provide appropriate services to the child if there is competent evidence demonstrating the need for the amendment. The reason for amending the case plan may be based on information discovered or circumstances arising after the approval of the case plan

regarding the provision of safe and proper care to the child.

(6) The case plan is deemed amended as to the child's health, mental health, and education records required by s. 39.6012 when the child's updated health, mental health, and education records are filed by the department under s. 39.701(7)(a).

(7) Amendments must include service interventions that are the least intrusive into the life of the parent and child, must focus on clearly defined objectives, and must provide the most efficient path to quick reunification or permanent placement given the circumstances of the case and the child's need for safe and proper care. A copy of the amended plan must immediately be given to the persons identified in s. 39.6011.

Section 18. Subsections (1) and (2) of section 39.603, Florida Statutes, are amended to read:

39.603 Court approvals of case planning.--

(1) All case plans and amendments to case plans must be approved by the court. At the hearing on the case plan, which shall occur in conjunction with the disposition hearing unless otherwise directed by the court, the court shall determine:

(a) All parties who were notified and are in attendance at the hearing, either in person or through a legal representative. The court may appoint a guardian ad litem under Rule 1.210, Florida Rules of Civil Procedure, to represent the interests of any parent, if the location of the parent is known but the parent is not present at the hearing and the development of the plan is based upon the physical, emotional, or mental condition or physical location of the parent.

(b) If the plan is consistent with previous orders of the court placing the child in care.

(c) If the plan is consistent with the requirements for the content of a plan as specified in this chapter.

(d) In involuntary placements, whether each parent was notified of the right to counsel at each stage of the dependency proceedings, in accordance with the Florida Rules of Juvenile Procedure.

(e) Whether each parent whose location was known was notified of the right to participate in the preparation of a case plan and of the right to receive assistance from any other person in the preparation of the case plan.

(f) Whether the plan is meaningful and designed to address facts and circumstances upon which the court based the finding of dependency in involuntary placements or the plan is meaningful and designed to address facts and circumstances upon which the child was placed in out-of-home care voluntarily.

(2) When the court determines that any of the elements considered at the hearing related to the plan have not been met, the court shall require the parties to make necessary amendments to the plan under s. 39.6013. The amended plan must be submitted to the court for review and approval within 30 days after the hearing. A copy of the amended plan must also be provided to each party, if the location of the party is known, at least 3 business days before ~~72 hours prior to~~ filing with the court.

Section 19. Section 39.621, Florida Statutes, is amended to read:

39.621 Permanency determination by the court.--

(1) The Legislature finds that time is of the essence for permanency of children in the dependency system. A permanency hearing must be held no later than 12 months after the date the child was removed from the home or no later than 30 days after a court determines that reasonable efforts to return a child to either parent are not required, whichever occurs first. The purpose of the permanency hearing is to determine when the child will achieve the permanency goal or whether modifying the current goal is in the best interest of the child. A permanency hearing must be held at least every 12 months for any child who continues to receive supervision from the department or awaits adoption. ~~When the court has determined that reunification with either parent is not appropriate, then the court must make a permanency determination for the child.~~

(2) The permanency goals available under this chapter are:

(a) Reunification;

(b) Adoption, if a petition for termination of parental rights has been or will be filed;

(c) Permanent guardianship of a dependent child under s. 39.6221;

(d) Permanent placement with a fit and willing relative under s. 39.6231; or

(e) Placement in another planned permanent living arrangement under s. 39.6241.

(3)(a) At least 3 business days before the permanency hearing, the department shall file its judicial review social services report with the court and provide copies of the report to all parties. The report must include a recommended permanency

goal for the child, suggest changes to the case plan, if needed, and describe why the recommended goal is in the best interest of the child.

(b) Before the permanency hearing, the department shall advise the child and the individuals with whom the child will be placed about the availability of more permanent and legally secure placements and what type of financial assistance is associated with each placement.

(4) At the permanency hearing, the court shall determine:

(a) Whether the current permanency goal for the child is appropriate or should be changed.

(b) When the child will achieve one of the permanency goals.

(c) Whether the department has made reasonable efforts to finalize the permanency plan currently in effect.

(5) The best interest of the child is the primary consideration in determining the permanency goal for the child. The court must also consider:

(a) The reasonable preference of the child if the court has found the child to be of sufficient intelligence, understanding, and experience to express a preference.

(b) Any recommendation of the guardian ad litem.

(6)(a) ~~(2)~~ If a child will not be reunited with a parent, adoption, under ~~pursuant to~~ chapter 63, is the primary permanency option ~~available to the court~~. If the child is placed with a relative or with a relative of the child's half-brother or half-sister as a permanency option, the court may ~~shall~~ recognize the permanency of this placement without requiring the

relative to adopt the child.

(b) If the court approves a permanency goal of permanent guardianship of a dependent child, placement with a fit and willing relative, or another planned permanent living arrangement, the court shall make findings as to why this permanent placement is established without adoption of the child to follow. If the court approves a permanency goal of another planned permanent living arrangement, the court shall document the compelling reasons for choosing this goal.

(7) The findings of the court regarding reasonable efforts to finalize the permanency plan must be explicitly documented, made on a case-by-case basis, and stated in the court order.

(8) The case plan must list the tasks necessary to finalize the permanency placement and shall be updated at the permanency hearing if necessary. If a concurrent case plan is in place, the court may choose between the permanency goal options presented and shall approve the goal that is in the child's best interest.

(9) The permanency placement is intended to continue until the child reaches the age of majority and may not be disturbed absent a finding by the court that the circumstances of the permanency placement are no longer in the best interest of the child. If a parent who has not had his or her parental rights terminated makes a motion for reunification or increased contact with the child, the court shall hold a hearing to determine whether the dependency case should be reopened and whether there should be a modification of the order. At the hearing, the parent must demonstrate that the safety, well-being, and

physical, mental, and emotional health of the child is not endangered by the modification.

(10) The court shall base its decision concerning any motion by a parent for reunification or increased contact with a child on the effect of the decision on the safety, well-being, and physical and emotional health of the child. Factors that must be considered and addressed in the findings of fact of the order on the motion must include:

(a) The compliance or noncompliance of the parent with the case plan.

(b) The circumstances which caused the child's dependency and whether those circumstances have been resolved.

(c) The stability and longevity of the child's placement;

(d) The preferences of the child, if the child is of sufficient age and understanding to express a preference;

(e) The recommendation of the current custodian.

(f) The recommendation of the guardian ad litem, if one has been appointed.

~~(3) The permanency options listed in the following paragraphs shall only be considered by the court if adoption is determined by the court to not be in the child's best interest, except as otherwise provided in subsection (2):~~

~~(a) Guardianship pursuant to chapter 744.~~

~~(b) Long-term custody.~~

~~(c) Long-term licensed custody.~~

~~(d) Independent living.~~

~~The permanency placement is intended to continue until the child~~

~~reaches the age of majority and shall not be disturbed absent a finding by the court that the circumstances of the permanency placement are no longer in the best interest of the child.~~

Section 20. Section 39.6221, Florida Statutes, is created to read:

39.6221 Permanent guardianship of a dependent child.--

(1) If a court determines that reunification or adoption is not in the best interest of the child, the court may place the child in a permanent guardianship with a relative or other adult approved by the court if all of the following conditions are met:

(a) The child has been in the placement for not less than the preceding 6 months.

(b) The permanent guardian is suitable and able to provide a safe and permanent home for the child.

(c) The court determines that the child and the relative or other adult are not likely to need supervision or services of the department to ensure the stability of the permanent guardianship.

(d) The permanent guardian has made a commitment to provide for the child until the child reaches the age of majority and to prepare the child for adulthood and independence.

(e) The permanent guardian agrees to give notice of any change in his or her residential address or the residence of the child by filing a written document in the dependency file of the child with the clerk of the court.

(2) In its written order establishing a permanent

guardianship, the court shall:

(a) List the circumstances or reasons the child's parents are not fit to care for the child and why reunification is not possible by referring to specific findings of fact made in its order adjudicating the child dependent or by making separate findings of fact.

(b) State the reasons a permanent guardianship is being established instead of adoption.

(c) Specify the frequency and nature of visitation or contact between the child and his or her parents.

(d) Specify the frequency and nature of visitation or contact between the child and his or her grandparents, under s. 39.509.

(e) Specify the frequency and nature of visitation or contact between the child and his or her siblings.

(f) Require that the permanent guardian not return the child to the physical care and custody of the person from whom the child was removed without the approval of the court.

(g) List the powers and duties of the permanent guardian which shall include the rights and duties of a parent, including, but not limited to:

1. The right to physical and legal custody of the child.

2. The right and duty to protect, nurture, guide, and discipline the child.

3. The right and duty to provide the child with food, shelter, and education.

4. The right and duty to provide the child with ordinary medical, dental, psychiatric, and psychological care, unless

these rights and duties are otherwise enlarged or limited by court order.

(3) The court shall give the permanent guardian a separate order establishing the authority of the permanent guardian to care for the child, specifying what powers and duties listed in paragraph (2)(g) belong to the permanent guardian, and providing any other information the court deems proper which can be provided to persons who are not parties to the proceeding as necessary, notwithstanding the confidentiality provisions of s. 39.202.

(4) A permanent guardianship of a dependent child established under this chapter is not a plenary guardianship and is not subject to the requirements of chapter 744.

(5) The court shall retain jurisdiction over the case and the child shall remain in the custody of the permanent guardian unless the order creating the permanent guardianship is modified by the court. The court shall discontinue regular review hearings and relieve the department of the responsibility for supervising the placement of the child. Notwithstanding the retention of jurisdiction, the placement shall be considered permanency for the child.

(6) Placement of a child in a permanent guardianship does not terminate the parent-child relationship, including:

(a) The right of the child to inherit from his or her parents.

(b) The parents' right to consent to the child's adoption.

(c) The parents' responsibility to provide financial, medical, and other support for the child as ordered by the

court.

Section 21. Section 39.6231, Florida Statutes, is created to read:

39.6231 Permanent placement with a fit and willing relative.--

(1) If a court finds that reunification or adoption are not in the best interest of a child, the court may place the child with a fit and willing relative as a permanency option if:

(a) The child has been in the placement for at least the preceding 6 months.

(b) The relative has made a commitment to provide for the child until the child reaches the age of majority and to prepare the child for adulthood and independence.

(c) The relative is suitable and able to provide a safe and permanent home for the child.

(d) The relative agrees to give notice of any change in his or her residence or the residence of the child by filing a written document with the clerk of court.

(2) The department and the guardian ad litem shall provide the court with a recommended list and description of services needed by the child and the family in order to ensure the permanency of the placement.

(3) In its written order placing the child with a fit and willing relative, the court shall:

(a) List the circumstances or reasons reunification is not possible by referring to specific findings of fact made in its order adjudicating the child dependent or by making separate findings of fact.

(b) State the reasons permanent placement with a fit and willing relative is being established instead of adoption;

(c) Specify the frequency and nature of visitation or contact between the child and his or her parents.

(d) Specify the frequency and nature of visitation or contact between the child and his or her grandparents, under s. 39.509.

(e) Specify the frequency and nature of visitation or contact between the child and his or her siblings.

(f) Require that the relative not return the child to the physical care and custody of the person from whom the child was removed without the approval of the court.

(4) The court shall give the relative a separate order establishing his or her authority to care for the child and providing other information the court deems proper which can be provided to entities and individuals who are not parties to the proceeding as necessary, notwithstanding the confidentiality of s. 39.202.

(5) The department shall continue to supervise the placement with the relative until further court order. The court shall continue to review the placement at least once every 6 months.

(6) Each party to the proceeding must be advised by the department and the court that placement with a fit and willing relative does not preclude the possibility of the child returning to the custody of the parent.

(7) The court shall continue to conduct permanency hearings in order to reevaluate the possibility of adoption or

permanent guardianship of the child.

Section 22. Section 39.6241, Florida Statutes, is created to read:

39.6241 Another planned permanent living arrangement.--

(1) If a court finds that reunification is not in the best interest of a child, the court may approve placement of the child in another planned permanent living arrangement if:

(a) The court finds a more permanent placement, such as adoption, permanent guardianship, or placement with a fit and willing relative, is not in the best interest of the child.

(b) The department documents reasons the placement will endure and how the proposed arrangement will be more stable and secure than ordinary foster care.

(c) The court finds that the health, safety, and well-being of the child will not be jeopardized by such an arrangement.

(d) There are compelling reasons to show that another placement is the most appropriate permanency goal. Compelling reasons for another placement may include, but are not limited to:

1. The case of a parent and child who have a significant bond but the parent is unable to care for the child because of an emotional or physical disability and the child's foster parents have committed to raising him or her to the age of majority and to facilitate visitation with the disabled parent;

2. The case of a child for whom an Indian tribe has identified another planned permanent living arrangement for the child; or

3. The case of a foster child who is 16 years of age or older who chooses to remain in foster care and the child's foster parents are willing to care for the child until the child reaches 18 years of age.

(2) The department and the guardian ad litem must provide the court with a recommended list and description of services needed by the child, such as independent living services and medical, dental, educational, or psychological referrals, and a recommended list and description of services needed by his or her caregiver.

Section 23. Paragraphs (a) and (c) of subsection (7), paragraph (g) of subsection (8), and subsection (9) of section 39.701, Florida Statutes, are amended, and paragraph (k) is added to subsection (8) of that section, to read:

39.701 Judicial review.--

(7)(a) Before ~~Prior to~~ every judicial review hearing or citizen review panel hearing, the social service agency shall make an investigation and social study concerning all pertinent details relating to the child and shall furnish to the court or citizen review panel a written report that includes, but is not limited to:

1. A description of the type of placement the child is in at the time of the hearing, including the safety of the child and the continuing necessity for and appropriateness of the placement.

2. Documentation of the diligent efforts made by all parties to the case plan to comply with each applicable provision of the plan.

3. The amount of fees assessed and collected during the period of time being reported.

4. The services provided to the foster family or legal custodian in an effort to address the needs of the child as indicated in the case plan.

5. A statement that either:

a. The parent, though able to do so, did not comply substantially with the ~~provisions of the~~ case plan, and the agency recommendations;

b. The parent did substantially comply with the ~~provisions of the~~ case plan; or

c. The parent has partially complied with the ~~provisions of the~~ case plan, with a summary of additional progress needed and the agency recommendations.

6. A statement from the foster parent or legal custodian providing any material evidence concerning the return of the child to the parent or parents.

7. A statement concerning the frequency, duration, and results of the parent-child visitation, if any, and the agency recommendations for an expansion or restriction of future visitation.

8. The number of times a child has been removed from his or her home and placed elsewhere, the number and types of placements that have occurred, and the reason for the changes in placement.

9. The number of times a child's educational placement has been changed, the number and types of educational placements which have occurred, and the reason for any change in placement.

10. If the child has reached 13 years of age but is not yet 18 years of age, the results of the preindependent living, life skills, or independent living assessment; the specific services needed; and the status of the delivery of the identified services.

11. Copies of all medical, psychological, and educational records that support the terms of the case plan and that have been produced concerning the ~~child,~~ parents~~,~~ or any caregiver since the last judicial review hearing.

12. Copies of the child's current health, mental health, and education records as identified in s. 39.6012.

(c) In a case in which the child has been permanently placed with the social service agency, the agency shall furnish to the court a written report concerning the progress being made to place the child for adoption. If the child cannot be placed for adoption, a report on the progress made by the child towards alternative permanency goals or placements, including, but not limited to, guardianship, permanent guardianship under s. 39.6221, permanent placement under s. 39.6231 ~~long-term custody, long-term licensed custody~~, or independent living, must be submitted to the court. The report must be submitted to the court at least 72 hours before each scheduled judicial review.

(8) The court and any citizen review panel shall take into consideration the information contained in the social services study and investigation and all medical, psychological, and educational records that support the terms of the case plan; testimony by the social services agency, the parent, the foster parent or legal custodian, the guardian ad litem if one has been

appointed for the child, and any other person deemed appropriate; and any relevant and material evidence submitted to the court, including written and oral reports to the extent of their probative value. These reports and evidence may be received by the court in its effort to determine the action to be taken with regard to the child and may be relied upon to the extent of their probative value, even though not competent in an adjudicatory hearing. In its deliberations, the court and any citizen review panel shall seek to determine:

(g) Whether the child is receiving safe and proper care according to s. 39.6012, including, but not limited to, the appropriateness of the child's current placement, including whether the child is in a setting that ~~which~~ is as family-like and as close to the parent's home as possible, consistent with the child's best interests and special needs, and including maintaining stability in the child's educational placement.

(k) If amendments to the case plan are required. Amendments to the case plan must be made under s. 39.6013.

(9)(a) Based upon the criteria set forth in subsection (8) and the recommended order of the citizen review panel, if any, the court shall determine whether or not the social service agency shall initiate proceedings to have a child declared a dependent child, return the child to the parent, continue the child in out-of-home care for a specified period of time, or initiate termination of parental rights proceedings for subsequent placement in an adoptive home. Amendments ~~Modifications~~ to the case plan must be prepared ~~handled~~ as prescribed in s. 39.6013 ~~s. 39.601~~. If the court finds that the

prevention or reunification efforts of the department will allow the child to remain safely at home or be safely returned to the home, the court shall allow the child to remain in or return to the home after making a specific finding of fact that the reasons for the creation of the case plan have been remedied to the extent that the child's safety, well-being, and physical, mental, and emotional health will not be endangered.

(b) The court shall return the child to the custody of the parents at any time it determines that they have substantially complied with the case plan, if the court is satisfied that reunification will not be detrimental to the child's safety, well-being, and physical, mental, and emotional health.

(c) If, in the opinion of the court, the social service agency has not complied with its obligations as specified in the written case plan, the court may find the social service agency in contempt, shall order the social service agency to submit its plans for compliance with the agreement, and shall require the social service agency to show why the child could not safely be returned to the home of the parents.

~~(d) The court may extend the time limitation of the case plan, or may modify the terms of the plan, based upon information provided by the social service agency, and the guardian ad litem, if one has been appointed, the parent or parents, and the foster parents or legal custodian, and any other competent information on record demonstrating the need for the amendment. If the court extends the time limitation of the case plan, the court must make specific findings concerning the frequency of past parent-child visitation, if any, and the court~~

~~may authorize the expansion or restriction of future visitation. Modifications to the plan must be handled as prescribed in s. 39.601. Any extension of a case plan must comply with the time requirements and other requirements specified by this chapter.~~

(d) ~~(e)~~ If, at any judicial review, the court finds that the parents have failed to substantially comply with the case plan to the degree that further reunification efforts are without merit and not in the best interest of the child, on its own motion, the court ~~it~~ may order ~~authorize~~ the filing of a petition for termination of parental rights, whether or not the time period as contained in the case plan for substantial compliance has expired ~~elapsed~~.

(e) ~~(f)~~ No later than 6 ~~12~~ months after the date that the child was placed in shelter care, the court shall conduct a judicial review hearing to review ~~plan for~~ the child's permanency goal as identified in the case plan. At the hearing, the court shall make findings regarding the likelihood of the child's reunification with the parent or legal custodian within 12 months after the removal of the child from the home. If, at this hearing, the court makes a written finding that it is not likely that the child will be reunified with the parent or legal custodian within 12 months after the child was removed from the home, the department must file with the court and serve on all parties a motion to amend the case plan under s. 39.6013 and declare that it will use concurrent planning for the case plan. The department must file the motion no later than 10 business days after receiving the written finding of the court. The department must attach the proposed amended case plan to the

motion. If concurrent planning is already being used, the case plan must document the efforts the department is taking to complete the concurrent goal. ~~At this hearing, if the child is not returned to the physical custody of the parents, the case plan may be extended with the same goals only if the court finds that the situation of the child is so extraordinary that the plan should be extended. The case plan must document steps the department is taking to find an adoptive parent or other permanent living arrangement for the child.~~

(f) ~~(g)~~ The court may issue a protective order in assistance, or as a condition, of any other order made under this part. In addition to the requirements included in the case plan, the protective order may set forth requirements relating to reasonable conditions of behavior to be observed for a specified period of time by a person or agency who is before the court; and the ~~such~~ order may require any ~~such~~ person or agency to make periodic reports to the court containing such information as the court in its discretion may prescribe.

Section 24. Section 39.703, Florida Statutes, is amended to read:

39.703 Initiation of termination of parental rights proceedings; judicial review.--

(1) If, in preparation for a ~~any~~ judicial review hearing under this chapter, it is the opinion of the social service agency that the parents of the child have not complied with their responsibilities as specified in the written case plan although able to do so, the department shall state its intent to initiate proceedings to terminate parental rights, unless the

social service agency can demonstrate to the court that such a recommendation would not be in the child's best interests. If it is the intent of the department to initiate proceedings to terminate parental rights, the department shall file a petition for termination of parental rights no later than 3 months after the date of the previous judicial review hearing. If the petition cannot be filed within 3 months, the department shall provide a written report to the court outlining the reasons for delay, the progress made in the termination of parental rights process, and the anticipated date of completion of the process.

(2) If, at the time of the 12-month judicial review hearing, a child is not returned to the physical custody of the parents, the department shall file a petition to terminate parental rights. The court shall set an advisory hearing at the judicial review hearing if an advisory hearing has not previously been set. ~~initiate termination of parental rights proceedings under this chapter within 30 days. Only if the court finds that the situation of the child is so extraordinary and that the best interests of the child will be met by such action at the time of the judicial review may the case plan be extended. If the court decides to extend the plan, the court shall enter detailed findings justifying the decision to extend, as well as the length of the extension. A termination of parental rights petition need not be filed if: the child is being cared for by a relative who chooses not to adopt the child but who is willing, able, and suitable to serve as the legal custodian for the child until the child reaches 18 years of age; the court determines that filing such a petition would not be in~~

~~the best interests of the child; or the state has not provided the child's parent, when reasonable efforts to return a child are required, consistent with the time period in the state's case plan, such services as the state deems necessary for the safe return of the child to his or her home. Failure to initiate termination of parental rights proceedings at the time of the 12-month judicial review or within 30 days after such review does not prohibit initiating termination of parental rights proceedings at any other time.~~

(3) Notwithstanding subsection (2), the department may choose to not file or join in a petition to terminate the parental rights of a parent under subsection (2) if:

(a) The child is being cared for by a relative under s. 39.6231;

(b) The department has documented in the report to the court a compelling reason for determining that filing such a petition would not be in the best interest of the child. Compelling reasons for not filing or joining a petition to terminate parental rights may include, but are not limited to:

1. Adoption is not the appropriate permanency goal for the child;

2. No grounds to file a petition to terminate parental rights exist;

3. The child is an unaccompanied refugee minor as defined in 45 C.F.R. 400.111;

4. There are international legal obligations or compelling reasons relating to foreign policy that would preclude terminating parental rights; or

5. The department has not provided to the family, consistent with the time period in the case plan, services that the department deems necessary for the safe return of the child to the home.

(4) Upon good cause shown by any party or on its own motion, the court may review the determination by the department that compelling reasons exist for not filing a petition for termination of parental rights.

Section 25. Subsections (1) and (2) of section 39.806, Florida Statutes, are amended to read:

39.806 Grounds for termination of parental rights.--

(1) ~~The department, the guardian ad litem, or any person who has knowledge of the facts alleged or who is informed of those facts and believes that they are true may petition~~ Grounds for the termination of parental rights may be established under any of the following circumstances:

(a) When the parent or parents have voluntarily executed a written surrender of the child and consented to the entry of an order giving custody of the child to the department for subsequent adoption and the department is willing to accept custody of the child.

1. The surrender document must be executed before two witnesses and a notary public or other person authorized to take acknowledgments.

2. The surrender and consent may be withdrawn after acceptance by the department only after a finding by the court that the surrender and consent were obtained by fraud or under duress.

(b) Abandonment as defined in s. 39.01(1) or when the identity or location of the parent or parents is unknown and cannot be ascertained by diligent search within 60 days.

(c) When the parent or parents engaged in conduct toward the child or toward other children that demonstrates that the continuing involvement of the parent or parents in the parent-child relationship threatens the life, safety, well-being, or physical, mental, or emotional health of the child irrespective of the provision of services. Provision of services may be evidenced by proof that services were provided through a previous plan or offered as a case plan from a child welfare agency.

(d) When the parent of a child is incarcerated in a state or federal correctional institution and either:

1. The period of time for which the parent is expected to be incarcerated will constitute a substantial portion of the period of time before the child will attain the age of 18 years;

2. The incarcerated parent has been determined by the court to be a violent career criminal as defined in s. 775.084, a habitual violent felony offender as defined in s. 775.084, or a sexual predator as defined in s. 775.21; has been convicted of first degree or second degree murder in violation of s. 782.04 or a sexual battery that constitutes a capital, life, or first degree felony violation of s. 794.011; or has been convicted of an offense in another jurisdiction which is substantially similar to one of the offenses listed in this paragraph. As used in this section, the term "substantially similar offense" means any offense that is substantially similar in elements and

penalties to one of those listed in this subparagraph, and that is in violation of a law of any other jurisdiction, whether that of another state, the District of Columbia, the United States or any possession or territory thereof, or any foreign jurisdiction; or

3. The court determines by clear and convincing evidence that continuing the parental relationship with the incarcerated parent would be harmful to the child and, for this reason, that termination of the parental rights of the incarcerated parent is in the best interest of the child.

(e) ~~A petition for termination of parental rights may also be filed~~ When a child has been adjudicated dependent, a case plan has been filed with the court, and:

1. The child continues to be abused, neglected, or abandoned by the parents. In this case, the failure of the parents to substantially comply for a period of 12 months after an adjudication of the child as a dependent child or the child's placement into shelter care, whichever came first, constitutes evidence of continuing abuse, neglect, or abandonment unless the failure to substantially comply with the case plan was due either to the lack of financial resources of the parents or to the failure of the department to make reasonable efforts to reunify the parent and child. The ~~Such~~ 12-month period begins ~~may begin~~ to run only after the child's placement into shelter care or the entry of a disposition order placing the custody of the child with the department or a person other than the parent and the approval by the court of a case plan with a goal of reunification with the parent, whichever came first; or

2. The parent has materially breached the case plan by making it unlikely that he or she will be able to substantially comply with the case plan before the time for compliance expires. Because time is of the essence for permanency of children in the dependency system and, thus, in order to prove the parent has materially breached the case plan, the court must find by clear and convincing evidence that the parent is unlikely or unable to substantially comply with the case plan before time expires to comply with the case plan.

(f) When the parent or parents engaged in egregious conduct or had the opportunity and capability to prevent and knowingly failed to prevent egregious conduct that threatens the life, safety, or physical, mental, or emotional health of the child or the child's sibling.

1. As used in this subsection, the term "sibling" means another child who resides with or is cared for by the parent or parents regardless of whether the child is related legally or by consanguinity.

2. As used in this subsection, the term "egregious conduct" means abuse, abandonment, neglect, or any other conduct of the parent or parents that is deplorable, flagrant, or outrageous by a normal standard of conduct. Egregious conduct may include an act or omission that occurred only once but was of such intensity, magnitude, or severity as to endanger the life of the child.

(g) When the parent or parents have subjected the child to aggravated child abuse as defined in s. 827.03, sexual battery or sexual abuse as defined in s. 39.01, or chronic abuse.

(h) When the parent or parents have committed murder or voluntary manslaughter of another child, or a felony assault that results in serious bodily injury to the child or another child, or aided or abetted, attempted, conspired, or solicited to commit such a murder or voluntary manslaughter or felony assault.

(i) When the parental rights of the parent to a sibling have been terminated involuntarily.

(2) Reasonable efforts to preserve and reunify families are ~~shall~~ not ~~be~~ required if a court of competent jurisdiction has determined that any of the events described in paragraphs (1)(e)-(i) have occurred.

Section 26. Subsection (1) of section 39.810, Florida Statutes, is amended to read:

39.810 Manifest best interests of the child.--In a hearing on a petition for termination of parental rights, the court shall consider the manifest best interests of the child. This consideration shall not include a comparison between the attributes of the parents and those of any persons providing a present or potential placement for the child. For the purpose of determining the manifest best interests of the child, the court shall consider and evaluate all relevant factors, including, but not limited to:

(1) Any suitable permanent custody arrangement with a relative of the child. However, the availability of a nonadoptive placement with a relative may not receive greater consideration than any other factor weighing on the manifest best interest of the child and may not be considered as a factor

weighing against termination of parental rights. If a child has been in a stable or preadoptive placement for not less than 6 months, the availability of a different placement, including a placement with a relative, may not be considered as a ground to deny the termination of parental rights.

Section 27. Subsection (4) of section 39.811, Florida Statutes, is amended to read:

39.811 Powers of disposition; order of disposition.--

(4) If the child is neither in the custody of the department nor in the custody of a parent and the court finds that the grounds for termination of parental rights have been established for either or both parents, the court shall enter an order terminating parental rights for the parent or parents for whom the grounds for termination have been established and placing the child with the department or an appropriate legal custodian. If the parental rights of both parents have been terminated, or if the parental rights of only one parent have been terminated and the court makes specific findings based on evidence presented that placement with the remaining parent is likely to be harmful to the child, the court may order that the child be placed with a legal custodian other than the department after hearing evidence of the suitability of the ~~such~~ intended placement. Suitability of the intended placement includes the fitness and capabilities of the proposed legal custodian to function as the primary caregiver for a particular child; and the compatibility of the child with the home in which the child is intended to be placed. If the court orders that a child be placed with a legal custodian under this subsection, the court

shall appoint a ~~such~~ legal custodian ~~either~~ as the guardian for the child as provided in s. 744.3021 or s. 39.621 ~~or as the long-term custodian of the child as provided in s. 39.622 so long as the child has been residing with the legal custodian for a minimum of 6 months~~. The court may modify the order placing the child in the custody of the legal custodian and revoke the guardianship established under s. 744.3021 or another ~~the long-term custodial~~ relationship if the court subsequently finds the placement to be no longer in the best interest of the child.

Section 28. Paragraph (b) of subsection (3) of section 39.0015, Florida Statutes, is amended to read:

39.0015 Child abuse prevention training in the district school system.--

(3) DEFINITIONS.--As used in this section:

(b) "Child abuse" means those acts as defined in ss. 39.01(1), (2), (32), (42), (44), (55) ~~(30), (43), (45), (52)~~, and (66) ~~(63)~~, 827.04, and 984.03(1), (2), and (37).

Section 29. Subsection (5) of section 39.205, Florida Statutes, is amended to read:

39.205 Penalties relating to reporting of child abuse, abandonment, or neglect.--

(5) If the department or its authorized agent has determined after its investigation that a report is false, the department shall, with the consent of the alleged perpetrator, refer the report to the local law enforcement agency having jurisdiction for an investigation to determine whether sufficient evidence exists to refer the case for prosecution for filing a false report as defined in s. 39.01(28) ~~s. 39.01(27)~~.

During the pendency of the investigation by the local law enforcement agency, the department must notify the local law enforcement agency of, and the local law enforcement agency must respond to, all subsequent reports concerning children in that same family in accordance with s. 39.301. If the law enforcement agency believes that there are indicators of abuse, abandonment, or neglect, it must immediately notify the department, which must assure the safety of the children. If the law enforcement agency finds sufficient evidence for prosecution for filing a false report, it must refer the case to the appropriate state attorney for prosecution.

Section 30. Subsection (1) of section 39.302, Florida Statutes, is amended to read:

39.302 Protective investigations of institutional child abuse, abandonment, or neglect.--

(1) The department shall conduct a child protective investigation of each report of institutional child abuse, abandonment, or neglect. Upon receipt of a report that alleges that an employee or agent of the department, or any other entity or person covered by s. 39.01(33) or (46) ~~s. 39.01(31) or (47)~~, acting in an official capacity, has committed an act of child abuse, abandonment, or neglect, the department shall initiate a child protective investigation within the timeframe established by the central abuse hotline under ~~pursuant to~~ s. 39.201(5) and orally notify the appropriate state attorney, law enforcement agency, and licensing agency. These agencies shall immediately conduct a joint investigation, unless independent investigations are more feasible. When conducting investigations onsite or

having face-to-face interviews with the child, such investigation visits shall be unannounced unless it is determined by the department or its agent that the ~~such~~ unannounced visits would threaten the safety of the child. When a facility is exempt from licensing, the department shall inform the owner or operator of the facility of the report. Each agency conducting a joint investigation is ~~shall be~~ entitled to full access to the information gathered by the department in the course of the investigation. A protective investigation must include an onsite visit of the child's place of residence. In all cases, the department shall make a full written report to the state attorney within 3 working days after making the oral report. A criminal investigation shall be coordinated, whenever possible, with the child protective investigation of the department. Any interested person who has information regarding the offenses described in this subsection may forward a statement to the state attorney as to whether prosecution is warranted and appropriate. Within 15 days after the completion of the investigation, the state attorney shall report the findings to the department and shall include in the ~~such~~ report a determination of whether or not prosecution is justified and appropriate in view of the circumstances of the specific case.

Section 31. For the purpose of incorporating the amendments made by this act to section 39.806, Florida Statutes, in a reference thereto, subsection (5) of section 39.802, Florida Statutes, is reenacted to read:

39.802 Petition for termination of parental rights; filing; elements.--

(5) When a petition for termination of parental rights is filed under s. 39.806(1), a separate petition for dependency need not be filed and the department need not offer the parents a case plan with a goal of reunification, but may instead file with the court a case plan with a goal of termination of parental rights to allow continuation of services until the termination is granted or until further orders of the court are issued.

Section 32. Subsection (1) of section 39.828, Florida Statutes, is amended to read:

39.828 Grounds for appointment of a guardian advocate.--

(1) The court shall appoint the person named in the petition as a guardian advocate with all the powers and duties specified in s. 39.829 for an initial term of 1 year upon a finding that:

(a) The child named in the petition is or was a drug dependent newborn as described in s. 39.01(32)(g) ~~s. 39.01(30)(g)~~;

(b) The parent or parents of the child have voluntarily relinquished temporary custody of the child to a relative or other responsible adult;

(c) The person named in the petition to be appointed the guardian advocate is capable of carrying out the duties as provided in s. 39.829; and

(d) A petition to adjudicate the child dependent under ~~pursuant to~~ this chapter has not been filed.

Section 33. Subsection (3) of section 63.092, Florida Statutes, is amended to read:

63.092 Report to the court of intended placement by an adoption entity; at-risk placement; preliminary study.--

(3) PRELIMINARY HOME STUDY.--Before placing the minor in the intended adoptive home, a preliminary home study must be performed by a licensed child-placing agency, a child-caring agency registered under s. 409.176, a licensed professional, or agency described in s. 61.20(2), unless the adoptee is an adult or the petitioner is a stepparent or a relative. If the adoptee is an adult or the petitioner is a stepparent or a relative, a preliminary home study may be required by the court for good cause shown. The department is required to perform the preliminary home study only if there is no licensed child-placing agency, child-caring agency registered under s. 409.176, licensed professional, or agency described in s. 61.20(2), in the county where the prospective adoptive parents reside. The preliminary home study must be made to determine the suitability of the intended adoptive parents and may be completed prior to identification of a prospective adoptive minor. A favorable preliminary home study is valid for 1 year after the date of its completion. Upon its completion, a copy of the home study must be provided to the intended adoptive parents who were the subject of the home study. A minor may not be placed in an intended adoptive home before a favorable preliminary home study is completed unless the adoptive home is also a licensed foster home under s. 409.175. The preliminary home study must include, at a minimum:

(a) An interview with the intended adoptive parents;

(b) Records checks of the department's central abuse

registry and criminal records ~~correspondence~~ checks under s. 39.0138 ~~pursuant to s. 435.045~~ through the Department of Law Enforcement on the intended adoptive parents;

(c) An assessment of the physical environment of the home;

(d) A determination of the financial security of the intended adoptive parents;

(e) Documentation of counseling and education of the intended adoptive parents on adoptive parenting;

(f) Documentation that information on adoption and the adoption process has been provided to the intended adoptive parents;

(g) Documentation that information on support services available in the community has been provided to the intended adoptive parents; and

(h) A copy of each signed acknowledgment of receipt of disclosure required by s. 63.085.

If the preliminary home study is favorable, a minor may be placed in the home pending entry of the judgment of adoption. A minor may not be placed in the home if the preliminary home study is unfavorable. If the preliminary home study is unfavorable, the adoption entity may, within 20 days after receipt of a copy of the written recommendation, petition the court to determine the suitability of the intended adoptive home. A determination as to suitability under this subsection does not act as a presumption of suitability at the final hearing. In determining the suitability of the intended adoptive home, the court must consider the totality of the circumstances

in the home. No minor may be placed in a home in which there resides any person determined by the court to be a sexual predator as defined in s. 775.21 or to have been convicted of an offense listed in s. 63.089(4)(b)2.

Section 34. Paragraph (b) of subsection (3) of section 409.165, Florida Statutes, is amended to read:

409.165 Alternate care for children.--

(3) With the written consent of parents, custodians, or guardians, or in accordance with those provisions in chapter 39 that relate to dependent children, the department, under rules properly adopted, may place a child:

(b) With an adult nonrelative approved by the court for permanent guardianship ~~long-term custody~~;

under such conditions as are determined to be for the best interests or the welfare of the child. Any child placed in an institution or in a family home by the department or its agency may be removed by the department or its agency, and such other disposition may be made as is for the best interest of the child, including transfer of the child to another institution, another home, or the home of the child. Expenditure of funds appropriated for out-of-home care can be used to meet the needs of a child in the child's own home or the home of a relative if the child can be safely served in the child's own home or that of a relative if placement can be avoided by the expenditure of such funds, and if the expenditure of such funds in this manner is calculated by the department to be a potential cost savings.

Section 35. Paragraph (d) of subsection (1) of section

419.001, Florida Statutes, is amended to read:

419.001 Site selection of community residential homes.--

(1) For the purposes of this section, the following definitions shall apply:

(d) "Resident" means any of the following: a frail elder as defined in s. 400.618; a physically disabled or handicapped person as defined in s. 760.22(7)(a); a developmentally disabled person as defined in s. 393.063; a nondangerous mentally ill person as defined in s. 394.455(18); or a child who is found to be dependent or a child in need of services as defined in s. 39.01(14), s. 984.03(9) or (12), or s. 985.03(8).

Section 36. Sections 39.601, 39.622, 39.623, 39.624, and 435.045, Florida Statutes, are repealed.

Section 37. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7157 PCB EDTB 06-03 Internet Phishing
SPONSOR(S): Economic Development, Trade & Banking Committee; Bilivakis
TIED BILLS: None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Economic Development, Trade & Banking Committee	13 Y, 0 N	Olmedillo	Carlson
1) Civil Justice Committee		Blalock	Bond
2) Criminal Justice Appropriations Committee			
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

"Phishing" refers to obtaining personal identifying information from individuals via the Internet with the intent to possess or use such information fraudulently.

This bill creates the "Anti-Phishing Act" and will prohibit the acquisition of personal identifying information from a Florida resident through the use of a website or e-mail with the intent to possess or use such information fraudulently. To accomplish this goal the Anti-Phishing Act provides the following:

- Creates a civil cause of action for Internet access providers, financial institutions, web page or trademark owners harmed by a violation, and the Attorney General.
- Provides the plaintiffs with the power to seek injunctive relief and damages in the greater amount of the actual damages arising from the violation, or $5,000 for each violation of the same nature. A court may increase damages to three times the actual damages sustained if violations constitute a pattern. The bill does not preclude the award of damages otherwise available under federal or state law.
- Provides for an award of attorney's fees and costs to a prevailing plaintiff.
- Establishes personal jurisdiction for a violator, sets venue in any county where the plaintiff resides or where any part of the action occurred, and creates a three year statute of limitations.
- Provides that certain moneys received by the Attorney General shall be deposited in the Legal Affairs Revolving Trust Fund.
- Grants the Department of Legal Affairs (Department) rulemaking authority to implement the provisions of this act.

This bill appears to have an indeterminate increased fiscal impact on state revenues and an indeterminate increased fiscal impact on state expenditures. This bill does not appear to have a fiscal impact on local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility -- This bill increases personal accountability for unlawful actions and injurious behavior.

Provide limited government -- This bill creates a new civil cause of action designed to deter and punish identity theft.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Identity theft is a substantial problem in the United States and "phishing" represents the cutting edge of this devious practice.

"Phishing" refers to obtaining personal identifying information from individuals via the Internet with the intent to possess or use such information fraudulently. Typically, a person attempting to obtain information sends an e-mail that appears to come from a bank or other trusted business requesting an individual to verify their account by typing personal identifying information, such as credit card information, social security numbers, account usernames, passwords, etc. A person may also use a phony web site to trick citizens into forfeiting sensitive personal information.

The Federal Trade Commission (FTC) reported that 27.3 million Americans have been victims of identity theft in the last five years, including 9.9 million people in 2003 alone.[1] According to the FTC, last year's identity theft losses to businesses and financial institutions totaled nearly $48 billion and consumer victims reported $5 billion in out-of-pocket expenses.[2]

Moreover, according to the Anti-Phishing Working Group, the volume of fraudulent phishing e-mail is growing at a rate in excess of 30 percent each month.[3]

Anti-Phishing Bills in Congress

The Subcommittee on Crime, Terrorism, and Homeland Security of the U.S. House of Representatives is currently reviewing H.R. 1099, which criminalizes internet scams involving the fraudulent obtaining of information, commonly known as "phishing".[4]

H.R. 1099 imposes a fine or imprisonment for up to five years, or both, for a person who knowingly and with the intent to engage in an activity constituting fraud or identity theft under Federal or State law: (1) creates or procures the creation of a website or domain name that represents itself as a legitimate online business without the authority or approval of the registered owner of such business; and (2) uses that website or domain name to solicit means of identification from any person.

---

[1] See article issued by Federal Trade Commission, dated September 3, 2003 "FTC Releases Survey of Identity Theft in U.S. 27.3 Million Victims in Past 5 Years, Billions in Losses for Businesses and Consumers". See also http://www.ftc.gov/opa/2003/idtheft.htm.

[2] Id.

[3] The Anti-Phishing Working Group (APWG) is a global pan-industrial and law enforcement association that focuses on eliminating fraud and identity theft that results from phishing and e-mail spoofing of all types.

[4] The Senate companion, S.472 is before the Judiciary Committee.

In addition, H.R. 1099 imposes a fine or imprisonment for up to five years, or both, for a person who knowingly and with the intent to engage in activity constituting fraud or identity theft under Federal or State law sends an electronic mail message that: (1) falsely represents itself as being sent by a legitimate online business; (2) includes an Internet location tool referring or linking users to an online location on the World Wide Web that falsely purports to belong to or be associated with a legitimate online business; and (3) solicits means of identification from the recipient.

Effect of bill

Name

This bill creates the "Anti-Phishing Act".

Prohibited Acts

This bill prohibits obtaining identifying information from individuals through certain means via the Internet with the intent to possess or use such information fraudulently. This bill prohibits:

- Representing oneself, either directly or by implication to be another person, without the authority or approval of such other person, through the use of a web page or Internet domain name; and
- Using that web page, a link to the web page, or another site on the Internet to induce, request, or solicit another person to provide identifying information.

This bill also prohibits sending or causing to be sent an e-mail to a resident of this state that:

- Is falsely represented as being sent by another person, without the authority or approval of such other person;
- Refers or links the recipient to a falsely represented web site; and
- Directly or indirectly solicits from the recipient identifying information for a purpose that the recipient believed to be legitimate.

This bill defines or incorporates by reference definitions of terms as follows:

- "Department" means the Department of Legal Affairs.
- "Electronic mail message" means an electronic message or computer file that is transmitted between two or more telecommunications devices; computers; computer networks, regardless of whether the network is a local, regional, or global network; or electronic devices capable of receiving electronic messages, regardless of whether the message is converted to hard copy format after receipt, viewed upon transmission, or stored for later retrieval.[5]
- "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.[6]
- "Identifying information" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:
    - Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food stamp account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;

[5] s. 668.602(7), F.S.
[6] s. 668.602(6), F.S.

    - Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
    - Unique electronic identification number, address, or routing code;
    - Medical records;
    - Telecommunication identifying information or access device; or
    - Other number or information that can be used to access a person's financial resources.[7]
- "Internet domain name" means a globally unique, hierarchical reference to an Internet host or service, which is assigned through centralized Internet naming authorities and which is comprised of a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.[8]
- "Web page" means a location that has a single uniform resource locator (URL) with respect to the world wide web or another location that can be accessed on the Internet.

Remedies

This bill gives standing to bring a civil action under this part to:

- A person engaged in the business of providing Internet access to the public who was adversely affected by the violation;
- A financial institution as defined by s. 655.005(1)(h), F.S., adversely affected by the violation.
- An owner of a web page or trademark who was harmed by a violation under this bill; and
- The Attorney General.

A person bringing an action may seek injunctive relief to halt a violation under this bill, recover damages in the greater amount of the actual damages arising from the violation, or $5,000 for each violation of the same nature, or seek both injunctive relief and damages. Violations are considered of the same nature if they consisted of the same action or course of conduct regardless of how many times the act occurred. A court may increase damages to three times the actual damages sustained if violations constitute a pattern or practice.

This bill also provides for an award of attorney's fees and costs to a prevailing plaintiff.

This bill provides that the violator submits personally to the jurisdiction of the courts of the State of Florida by committing a violation of this Act. In addition, the bill establishes a 3 year statute of limitations to bring a suit under the Act.

This bill also provides that venue lies in any county in which the plaintiff resides or in which any part of the violation occurred.

This bill requires that any moneys received by the Attorney General for attorney's fees and costs, or not utilized to reimburse persons harmed under this act, shall be deposited in the Legal Affairs Revolving Trust Fund.

This bill does not preclude the award of damages otherwise available for the same conduct pursuant to federal or state law.

This bill grants the Department rulemaking authority to implement the provisions of this act.

Exemption

[7] s. 817.568(1)(f), F.S.
[8] s. 668.602(10), F.S.

This bill exempts from liability a telecommunication provider's or an Internet service provider's good faith transmission or intermediate temporary storing of identifying information. The bill also exempts providers of an interactive computer service when removing or disabling access to content that resides on an Internet website or other online location controlled or operated by such provider if such provider believes in good faith that the content is used to engage in a violation of the provisions of this bill.

C. SECTION DIRECTORY:

Section 1 creates s. 668.701, F.S., to provide a title; s. 668.702, F.S., to provide definitions; s. 668.703, F.S., to provide prohibited acts; s. 668.704, F.S., to provide remedies and standing; and s. 668.705, F.S., to provide exemptions.

Section 2 provides an effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill also provides that the Attorney General may bring a civil action against a person that violates the Act, and would be able to collect the greater of the actual damages or $5,000, which is to be deposited into the Legal Affairs Revolving Trust Fund.

The bill grants the Attorney General authority to enforce violations under this bill. Therefore, the Attorney General will incur costs in order to prosecute persons that violate this bill. The costs, however, are indeterminate.

According to the Department of Legal Affairs, it prosecuted only two cases under the 2004 Electronic Mail Communications Act, which creates criminal penalties for sending unsolicited false or misleading commercial electronic mail messages to an electronic mail address that is held by a resident of Florida. A number of persons filed additional complaints; however the Department of Legal Affairs has not been able to determine who sent the messages, preventing further action under the statute.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

This Act creates sections 668.701 – 668.705, F.S., to provide civil penalties for the acquisition of personal identifying information from a resident of this State with the intent to possess or use such information fraudulently. Under certain circumstances, it is possible that this bill could assert Florida's police power over non-residents of Florida, and therefore this bill could possibly violate the Commerce Clause of the U.S. Constitution.

The Commerce Clause empowers Congress to regulate commerce among the several states.[9] "This affirmative grant of authority to Congress also encompasses an implicit or dormant limitation on the authority of the States to enact legislation affecting interstate commerce."[10] The aspect of the Commerce Clause, which operates as an implied limitation upon state and local government authority is often referred to as the dormant Commerce Clause.[11]

In Pike v. Bruce Church Inc.,[12] the court devised a two prong test to determine if a state statute violates the dormant Commerce Clause:

> Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.

The Supreme Court explained that the critical consideration is the overall effect of the statute on both local and interstate activity with respect to both parts of the Pike test.[13] The Supreme Court has invalidated statutes under the Pike test on the grounds that their extraterritorial effect renders them unconstitutional.

For instance, in Healy, the court held:

> [T]he extraterritorial effects of state economic regulation stand at a minimum for the following proposition:
>
> First, the "commerce clause . . . preludes the application of a state statute to commerce that takes place wholly outside of the State's borders, whether or not the commerce has effects within the State" . . . . Second, a statute that directly controls commerce occurring wholly outside the boundaries of a State exceeds the inherent limits of the enacting State's authority and is invalid regardless of whether the statute's extraterritorial reach was intended by the legislature. The critical inquiry is whether the practical effect of the regulation is to control conduct beyond the boundaries of the State. Third, the practical effect of the statute must be evaluated not only by considering the consequences of the statute itself, but also by considering how the challenged statute may interact with the legitimate regulatory regimes of other Sates and what effect would arise if not one, but

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[9] *See* U.S. Const., art. I, § 8, cl. 3.

[10] Healy v. The Beer Insitiute, 491 U.S. 324 (1989).

[11] MaryCle, LLC. v. First Choice Internet, Inc., 2006 WL 173659 (Md. App. 2006); citing Bd. of Trs. of the Employees' Ret. Sys. of Baltimore City v. Mayor and City Council of Baltimore, 317 Md. 72 at 131 (1989).

[12] 397 U.S. 137 (1970).

[13] *See* Brown-Forman Distillers Corp. v. N.Y. State Liquor Authority, 476 U.S. 573 at 579 (1986).

> many or every, State adopted similar legislation. Generally speaking, the Commerce Clause protects against inconsistent legislation arising from the projection of one state regulatory regime into the jurisdiction of another state.[14]

In American Libraries Ass'n v. Pataki[15], the first case to apply the dormant Commerce Clause to a state law on Internet use[16], a federal trial court granted an injunction preventing the State of New York from enforcing a statute that criminalized intentional communications via the internet for the purpose of engaging in harmful sexual conduct with a minor. The court held that the New York Act is concerned with interstate commerce and contravenes the Commerce Clause for three reasons:

> First, the Act represents an unconstitutional projection of New York law into conduct that occurs wholly outside New York. Second, the Act is invalid because although protecting children from indecent material is a legitimate and indisputably worthy subject of state legislation, the burdens on interstate commerce resulting from the Act clearly exceed any local benefit derived from it. Finally, the Internet is one of those areas of commerce that must be marked off as a national preserve to protect users from inconsistent legislation that, taken to its most extreme, could paralyze development of the Internet altogether. Thus, the Commerce Clause ordains that only Congress can legislate in this area, subject, of course, to whatever limitations other provisions of the Constitution (such as the First Amendment) may require.[17]

"Many courts have followed the logic of American Libraries Ass'n."[18]

Moreover, courts have examined "spam" statutes, which prohibit unsolicited false or misleading commercial electronic mail under the dormant Commerce Clause and found those statutes to be constitutional.[19]

In Heckel, the court held that there was no sweeping extraterritorial effect that would outweigh the local benefits of the Act because the statute regulates only those emails directed to a Washington resident or sent from a computer located within Washington.[20] The Act specifically prohibited e-mail solicitors from using misleading information in the subject line or transmission path of any commercial e-mail message sent to Washington residents or from a computer located in Washington.[21] The court distinguished the case from American Libraries Ass'n stating that the Washington Act did not impose liability for messages that are merely routed through Washington or that are read by a Washington resident who was not the actual addressee.[22]

In MaryCle, the court held that a Maryland statute was facially neutral because it applies to all email advertisers, regardless of their geographic location. It does not discriminate against out-of-state senders.[23]

In Ferguson, the court held that a California statute did not violate the commerce clause because the only burden on interstate commerce is that the email be truthful and non-deceptive email.[24]

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[14] Healy at 336-37; *see also* MaryCle, at 15.
[15] Am. Libraries Ass'n, 969 F. Supp. 160 (S.D.N.Y. 1997).
[16] *See* State v. Heckel, 24 P.3d 404 (Wash 2001).
[17] Am. Libraries Ass'n, 969 F. Supp. at 169 (S.D.N.Y. 1997)
[18] *See* The Internet and the Dormant Commerce Clause, 110 The Yale Law Journal 787 (2001).
[19] *See* State v. Heckel, 24 P.3d 404 (Wash 2001); MaryCle, LLC. v. First Choice Internet, Inc., 2006 WL 173659 (Md. App. 2006); Ferguson v. Friendfinders, Inc., 94 Cal.App.4th 1255 (1st Dist. 2002).
[20] Heckel ,at 412-13.
[21] Id at 413.
[22] Id.
[23] MaryCle, at 19.
[24] Feruson, at 1265.

Similarly, in Cashatt, a Florida court, using the Pike test, upheld a statute that criminalized the use of a computer on-line service or Internet service to seduce, lure or entice, a child to commit any illegal act.[25]

The Anti-Phishing Act, appears to apply evenhandedly to in-state and out-of-state transmitters. The local benefit of this Act is to protect the public and businesses from misleading and deceptive practices involving fraudulent use of personal information, a legitimate local public interest, and the only burden imposed is not using the Internet for the purpose of obtaining another's personal information for a fraudulent purpose.

B. RULE-MAKING AUTHORITY:

The bill grants the Department of Legal Affairs rulemaking authority to implement the provisions of the Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 16, 2006, the Economic Development, Trade and Banking Committee adopted an amendment to the bill. The amendment adds an exemption for providers of interactive computer services who remove or disable access to content due to a good faith belief that the content is being used to violate provisions of this bill. The bill was then reported favorably with a committee substitute.

[25] *See* Cashatt v. State, 873 So.2d 430 (1st DCA 2004).

A bill to be entitled

An act relating to fraudulent use or possession of identifying information; creating part IV of ch. 668, F.S.; providing a short title; providing definitions; prohibiting certain acts relating to fraudulent use or possession of identifying information; authorizing civil actions for violations; providing for injunctive relief and damages; authorizing courts to increase awards of actual damages under certain circumstances; providing for recovery of attorney's fees and court costs; providing for jurisdiction and venue; providing for deposit of certain moneys received by the Attorney General into the Legal Affairs Revolving Trust Fund; authorizing the Department of Legal Affairs to adopt rules; providing for nonapplication to certain entities' good faith handling of identifying information; specifying the absence of liability for certain actions taken to prevent certain violations; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Part IV of chapter 668, Florida Statutes, consisting of sections 668.701, 668.702, 668.703, 668.704, and 668.705, Florida Statutes, is created to read:

PART IV

FRAUDULENT USE OR POSSESSION OF IDENTIFYING INFORMATION

668.701 Short title.--This part may be cited as the "Anti-Phishing Act."

668.702 Definitions.--As used in this part, the term:

(1) "Department" means the Department of Legal Affairs.

(2) "Electronic mail address" has the same meaning as provided in s. 668.602.

(3) "Electronic mail message" has the same meaning as provided in s. 668.602.

(4) "Identifying information" has the same meaning as the term "personal identification information" as defined in s. 817.568(1).

(5) "Internet domain name" has the same meaning as provided in s. 668.602.

(6) "Web page" means a location that has a single uniform resource locator (URL) with respect to the World Wide Web or another location that can be accessed on the Internet.

668.703 Prohibited acts.--

(1) A person with an intent to engage in conduct involving the fraudulent use or possession of another person's identifying information may not represent oneself, directly or by implication, to be another person without the authority or approval of such other person through the use of a web page or Internet domain name and use that web page, Internet domain name, or a link to that web page or domain name or another site on the Internet to induce, request, or solicit a resident of this state to provide identifying information.

(2) A person with an intent to engage in conduct involving the fraudulent use or possession of identifying information may not send or cause to be sent to an electronic mail address held by a resident of this state an electronic mail message that is

falsely represented as being sent by another person without the authority or approval of such other person, refers or links the recipient of the message to a web page, and directly or indirectly induces, requests, or solicits the recipient of the electronic mail message to provide identifying information.

668.704 Remedies.--

(1) The following persons may bring a civil action against a person who violates this part:

(a) A person engaged in the business of providing Internet access service to the public who is adversely affected by the violation.

(b) A financial institution as defined in s. 655.005(1) that is adversely affected by the violation.

(c) An owner of a web page, trademark, or service mark who is adversely affected by the violation.

(d) The Attorney General.

(2) A person bringing an action under this section may:

(a) Seek injunctive relief to restrain the violator from continuing the violation.

(b) Recover damages in an amount equal to the greater of:

1. Actual damages arising from the violation; or

2. The sum of $5,000 for each violation of the same nature.

(3) The court may increase an award of actual damages in an action brought under this section to an amount not to exceed three times the actual damages sustained if the court finds that the violations have occurred with a frequency as to constitute a pattern or practice.

(4) For purposes of this section, violations are of the same nature if the violations consist of the same course of conduct or action, regardless of the number of times the conduct or action occurred.

(5) A plaintiff who prevails in an action filed under this section is entitled to recover reasonable attorney's fees and court costs.

(6) By committing a violation under this part, the violator submits personally to the jurisdiction of the courts of this state. This section does not preclude other methods of obtaining jurisdiction over a person who commits a violation under this part.

(7) An action under this part may be brought in any court of competent jurisdiction to enforce such rights and to recover damages as stated in this part.

(8) The venue for a civil action brought under this section shall be the county in which the plaintiff resides or in any county in which any part of the alleged violation under this part took place, regardless of whether the defendant was ever actually present in that county. A civil action filed under this section must be brought within 3 years after the violation occurred.

(9) The remedies available under this section are in addition to remedies otherwise available for the same conduct under federal or state law.

(10) Any moneys received by the Attorney General for attorney's fees and costs of investigation or litigation in proceedings brought under this section shall be deposited as

received into the Legal Affairs Revolving Trust Fund.

(11) Any moneys received by the Attorney General which are not for attorney's fees and costs of investigation or litigation or used for reimbursing persons found under this part to be damaged shall accrue to the state and be deposited as received into the Legal Affairs Revolving Trust Fund.

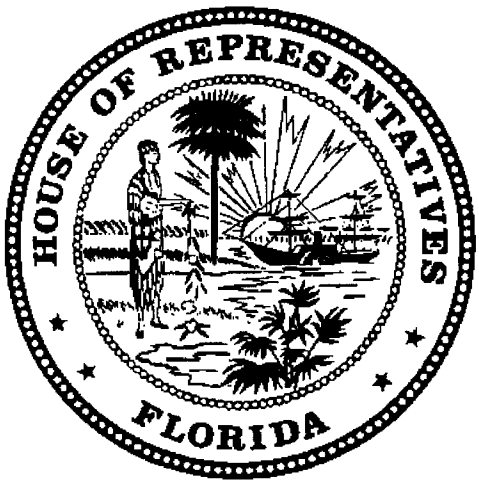
(12) The Department of Legal Affairs may adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part.

668.705 Exemptions.--

(1) This part does not apply to a telecommunications provider's or Internet service provider's good faith transmission or routing of, or intermediate temporary storing or caching of, identifying information.

(2) A provider of an interactive computer service is not liable under the laws of this state for removing or disabling access to content that resides on an Internet website or other online location controlled or operated by such provider if such provider believes in good faith that the content is used to engage in a violation of this part.

Section 2. This act shall take effect July 1, 2006.



Civil Justice Committee Amendment Packet

April 4th, 2006
10:15 AM - 11:00 AM
24 House Office Building

Allan G. Bense
Speaker

Mark Mahon
Chair

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **HB 0173 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

1

Council/Committee hearing bill: Civil Justice Committee

Representative Cannon offered the following:

Amendment

Remove line 36 and insert:

insurance policy or certificate of insurance in writing within 7

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

Bill No. **HB 0173 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

2

Council/Committee hearing bill: Civil Justice Committee

Representative Cannon offered the following:

Amendment (with title amendment)

Between line(s) 81 and 82, insert:

(5) This section shall not apply if at the time of the request for proposals or bids, or prior to the subcontractor, sub-subcontractor, or materialman commencing work or supplying materials under the construction contract, the general contractor or subcontractor provides a sample of an acceptable certificate of insurance or a one page schedule accurately reflecting all insurance requirements which extend coverage rights to an additional insured for that contract to the subcontractor, sub-subcontractor, or materialman and the insurance provided by the subcontractor, sub-subcontractor, or materialman does not comply with the construction contract. A schedule or sample certificate of insurance issued under this subsection shall not be deemed to amend or modify the contract between the parties in any way or to waive any requirement of the contract unless the schedule or certificate expressly states that such an amendment, modification, or waiver is intended.

Amendment No. 2 (for drafter's use only)

(6) This section shall apply to contracts entered into on or after July 1, 2006.

========== T I T L E A M E N D M E N T ==========

Remove line 18 and insert:

policies of insurance on certain grounds; specifying nonapplication of construction contract insurance provisions under certain circumstances; providing construction; providing for when certain provisions will be applied; providing an

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **HB 0457 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

1

Council/Committee hearing bill: Civil Justice Committee

Representative(s) Sands offered the following:

Amendment

Remove line 742 and insert:

qualified to be members of an examining committee.

HB 1521

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **HB 1521**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

1

Council/Committee hearing bill: Civil Justice Committee

Representative(s) Barreiro offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Subsection (17) is added to section 39.402, Florida Statutes, to read:

39.402 Placement in a shelter.--

(17) The court shall inquire of the parent as to whether the child has any relatives who might be considered as a placement. The parent shall provide the name and location information of any such relatives or other adults who might be considered a placement to the court and all parties. The court shall advise the parent that if the parent knows of any relative or other adult who wishes to be considered as a placement, it is the parent's duty to notify the court and assist the department in locating them.

Section 2. Paragraph (d) of subsection (1) of section 39.521, Florida Statutes, is amended to read:

39.521 Disposition hearings; powers of dispiosition. --

(1) A disposition hearing shall be conducted by the court, if the court finds that the facts alleged in the petition for

dependency were proven in the adjudicatory hearing, or if the parents or legal custodians have consented to the finding of dependency or admitted the allegations in the petition, have failed to appear for the arraignment hearing after proper notice, or have not been located despite a diligent search having been conducted.

(d) The court shall, in its written order of disposition, include all of the following:

1. The placement or custody of the child.

2. Special conditions of placement and visitation.

3. Evaluation, counseling, treatment activities, and other actions to be taken by the parties, if ordered.

4. The persons or entities responsible for supervising or monitoring services to the child and parent.

5. Continuation or discharge of the guardian ad litem, as appropriate.

6. The date, time, and location of the next scheduled review hearing, which must occur within the earlier of:

a. Ninety days after the disposition hearing;

b. Ninety days after the court accepts the case plan;

c. Six months after the date of the last review hearing; or

d. Six months after the date of the child's removal from his or her home, if no review hearing has been held since the child's removal from the home.

7. If the child is in an out-of-home placement, child support to be paid by the parents, or the guardian of the child's estate if possessed of assets which under law may be disbursed for the care, support, and maintenance of the child. The court may exercise jurisdiction over all child support matters, shall adjudicate the financial obligation, including

health insurance, of the child's parents or guardian, and shall enforce the financial obligation as provided in chapter 61. The state's child support enforcement agency shall enforce child support orders under this section in the same manner as child support orders under chapter 61. Placement of the child shall not be contingent upon issuance of a support order.

8.a. If the court does not commit the child to the temporary legal custody of an adult relative, legal custodian, or other adult approved by the court, the disposition order shall include the reasons for such a decision and shall include a determination as to whether diligent efforts were made by the department to locate an adult relative, legal custodian, or other adult willing to care for the child in order to present that placement option to the court instead of placement with the department.

b. If ~~diligent efforts are made to locate an adult relative willing and able to care for the child but, because~~ no suitable relative is found, and the child is placed with the department or a legal custodian ~~or other adult~~ approved by the court, both the department and the court shall consider transferring temporary legal custody to an adult relative approved by the court at a later date, but ~~neither~~ the department and ~~nor~~ the court may not ~~is obligated to~~ so place the child if it is in the child's best interest to remain in the current placement.

Section 3. Section 39.522, Florida Statutes, is amended to read:

39.522 Postdisposition change of custody.-- The court may change the temporary legal custody or the conditions of protective supervision at a postdisposition hearing, without the necessity of another adjudicatory hearing. The standard for

changing the custody of the child shall be the best interest of the child.

(1)(a) A child who has been placed in the child's own home under the protective supervision of an authorized agent of the department, in the home of a relative, in the home of a legal custodian, or in some other place may be brought before the court by the department or by any other interested person, upon the filing of a petition alleging a need for a change in the conditions of protective supervision or the placement.

(b) If any party or the actual custodian of the child objects to a change in placement~~If the parents or other legal custodians deny the need for a change~~, the court shall conduct an evidentiary hearing and hear all parties and the actual custodian in person or by counsel, or both.

(c) When the proposed change of placement is to any person other than a parent, the decision may not be based solely on the existence of a biological or prospective adoptive relationship with a placement or on the expressed wishes of a parent, caregiver or relative. The court's best interest determination shall be based on evidence admitted at the hearing and shall include an evaluation of, and entry of findings as to, all factors affecting the welfare of the child, including but not limited to:

1. The ability of the current and proposed custodians to provide for the safety, well-being, physical, mental and emotional health of the child;

2. The love, affection, and other emotional ties existing between the child and the current and proposed custodians;

3. The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity; and

4. The preference of the child, if the court deems the child to be of sufficient intelligence, understanding and experience to express a preference.

(2) Upon the admission of a need for a change or after such hearing, the court shall enter an order changing the placement, modifying the conditions of protective supervision, or continuing the conditions of protective supervision as ordered. ~~The standard for changing custody of the child shall be the best interest of the child.~~ If the child is not placed in foster care, then the new placement for the child must meet the home study criteria and court approval pursuant to this chapter.

(3) ~~(2)~~ In cases where the issue before the court is whether a child should be reunited with a parent, the court shall determine whether the parent has substantially complied with the terms of the case plan to the extent that the safety, well-being, and physical, mental, and emotional health of the child is not endangered by the return of the child to the home.

Section 4. Paragraph (d) of subsection (6) of section 63.082, Florida Statutes, is amended to read:

63.082 Execution of consent to adoption or affidavit of nonpaternity; family social and medical history; withdrawal of consent.--

(6)

(d) Subject to consideration of the factors listed in s. 39.522(1), when any child has resided in the same out-of-home placement for more than 1 year prior to the filing of a motion under this subsection, in determining whether the best interest of the child will be served by transferring the custody of the minor child to the prospective adoptive parent selected by the birth parent, the court shall give consideration to the rights of the birth parent to determine an appropriate placement for

the child, the permanency offered, the child's bonding with any potential adoptive home that the child has been residing in, and the importance of maintaining sibling relationships, if possible.

Section 5. Subsection (18) is added to section 120.80, Florida Statues, to read:

120.80 Exceptions and Special requirements; agencies.—

(18) Agency for Persons with Disabilities.—— Notwithstanding subsection (7), hearings shall be conducted by an administrative law judge assigned by the division in cases involving children with developmental disabilities who are in the custody of the department and placed in out-of-home care who apply for, are denied, or receive reduced developmental disability services under chapter 393.

Section 6. This act shall take effect July 1, 2006.

========== T I T L E A M E N D M E N T ==========

Remove the entire title and insert:

An act relating to children in out-of-home placements; amending s. 39.402, F.S.; providing that a court must be provided with a name and location of individual who might be considered for placement of a child; amending 39.521, F.S.; deleting requirement to use diligent efforts to located adult relative to care for a child; amending 39.522, F.S.; providing standard for changing the custody of a child; providing for an evidentiary hearing when there is an objection to the placement of a child; providing factors a court must consider in determining a change of placement to any person other than a parent; amending63.082, F.S.; providing factors for when a child has resided in the same out-of-home placement for more than 1 year; amending 120.80,

F.S.; providing for hearings conducted by an administrative law judge; providing an effective date.